

## **EXECUTIVE SUMMARY**

This submission is prepared for the forthcoming Universal Periodic Review (UPR) of Nepal. It is submitted by a coalition of different organizations<sup>1</sup> working to assess the progress made towards addressing the existing impunity for those involved in gross human rights violations during the armed conflict and its aftermath and the progress made in the transitional justice (TJ) process to address the human rights violations committed during the conflict. The organizations make a number of recommendations to Nepal to end the pervasive culture of impunity and to establish a credible TJ process to ensure access to effective remedies for victims of human rights violations.

The organizations acknowledge that since the previous UPR in 2015 and in particular after the 2015 Constitution came into force, there have been some significant efforts at economic, political and social reforms. 16 Acts have been passed to implement the fundamental rights provisions in the Constitution, guaranteed by the Constitution and torture and enforced disappearances have been criminalized by the new Penal Code that came into force from August 2018. However, regulations for the implementation of the Acts have not been enacted, as a result many economic, social and cultural rights guaranteed in the Constitution and the Acts have remained unimplemented to date. Furthermore, the government continues to condone impunity and lacks political will to address serious human rights violations that were committed during the armed conflict and since, which impacts negatively on efforts to improve the rule of law and accountability as well as erodes public trust in public institutions.

This submission highlights serious concerns regarding the TJ process and sets out concerns about the persistent culture of impunity for human rights violations and abuses, both past and present.

The information in this submission draws on consultations Advocacy Forum-Nepal together with other human rights organizations organized in a number of provinces during 2019 and 2020 with victims of conflict, human rights defenders and civil society

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<sup>1</sup> Advocacy Forum –Nepal (AF-Nepal), Accountability Watch Committee (AWC), Amnesty International-Nepal, Centre for Legal Studies (CLS), Conflict Victims’ Common Platform (CVCP), Conflict Victims’ National Alliance (CVNA), Conflict Victims Women National Network (CVWN), Conflict Victims Society for Justice (CVSJ-Nepal), Forum for Protection of People’s Rights Nepal, Forum for Women, Law and Development (FWLD), Human Rights and Justice Centre (HRJC), Justice and Rights Institute Nepal (JURI- Nepal), Legal Aid and Consultancy Centre Nepal (LACC), Nagarik Aawaz (NA), National Network of Disabled Conflict Victims, National Network of Families of Disappeared (NEFAD), Nepal Peacebuilding Initiative, Public Defender Society of Nepal (PDS), Terai Human Rights Defenders Alliance (THRD Alliance), Transcultural Psychosocial Organization Nepal (TPO), The Story Kitchen, and Voice of Women Media.

organizations and on ongoing monitoring of the TJ process and situation of human rights at provincial level by some of these organizations.

Nepal was elected to the United Nations Human Rights Council for the 2018-2020 term in 2017, and is reportedly planning to stand again in October 2020. Despite this membership, the country has still not issued a standing invitation to UN Special Procedures to visit Nepal to observe the human rights situation. Key procedures relevant to the human rights situation in the country, such as the UN Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, have repeatedly requested to visit but Nepal has not approved any invitations.<sup>2</sup>

## **FOLLOW UP TO THE PREVIOUS REVIEW**

Some progress has been made after the last UPR review 2015, such as the 2017 elections of local and provincial government to implement the federalism envisioned by the Constitution are noteworthy. The Constitution makes provision for 3-tier level federalism with the bicameral Federal Parliament of Nepal as the supreme legislative body. The National Assembly (Upper House) consists of 59 members where 56 are elected and 3 are appointed by the President on the recommendation of the Prime Minister. The House of Representatives (lower house) consists of 275 members and 165 are selected through First Past The Post elections and 110 are selected by a proportionate representation system.

The first provincial assembly elections in Nepal were held in two phases, on 26 November 2017 and 7 December 2017. There are 550 provincial seats in all of 7 provinces of Nepal. 330 (60%) of provincial seats are elected through first past the post system and 220 (40%) through proportional representation.

At its second UPR, Nepal accepted 152 out of 195 recommendations made to it. Out of the 42 recommendations only noted by the government, many of them are still relevant (but unimplemented) and thus require urgent attention.

The recommendations Nepal supported in 2015 included several in respect of ending impunity by ensuring investigation and prosecution of human rights violations;<sup>3</sup> respecting and implementing the decision of the Supreme Court of Nepal in establishing the TJ mechanisms, i.e. the Truth and Reconciliation Commission (TRC) and the Commission on Involuntary or Enforced Disappeared Persons (CIEDP<sup>4</sup> and guaranteeing

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<sup>3</sup> Joint Communication from Special Procedures on 12 April 2019, p.4, <[https://www.ohchr.org/Documents/Issues/Truth/OL\\_NPL\\_1\\_2019.pdf](https://www.ohchr.org/Documents/Issues/Truth/OL_NPL_1_2019.pdf)>

<sup>4</sup> Recommendations by France and New Zealand

access to justice and effective reparations to the victims of human rights violations.<sup>5</sup>

With the financial assistance of the European Union, the Government developed a UPR Action Plan Matrix for the implementation of UPR recommendations which was uploaded on the Ministry's website on 11 March 2018.<sup>6</sup> Among other points, the Action Plan states that the Government will prepare a bill to amend the Act establishing the TRC and the CIEDP as per the decision of the Supreme Court, prepare a bill to implement the Geneva Conventions and present it to the parliament and prepare a legal framework to protect victims and witnesses and present it in the parliament.<sup>7</sup> It has also promised that it will investigate grave violations of human rights, prioritise the TJ process and mobilize international support to this end, ensuring unhindered access to a rehabilitation package for all child soldiers, and provide free legal assistance to victims as part of the reparation package for victims of human rights violations.<sup>8</sup>

Unfortunately, none of these recommendations have been implemented fully. Many of these promises have in fact been ignored altogether.<sup>9</sup>

## **LACK OF ACCOUNTABILITY FOR PAST HUMAN RIGHTS VIOLATIONS**

Transitional justice (TJ) remains a long-held dream and battle for victims of the serious crimes committed by the then Maoists and the security forces during the 10-year Maoist insurgency, which ended in 2006. The [Comprehensive Peace Agreement](#), signed on 21 November 2006, ending the war, promised to end impunity and to establish a TRC to address human rights violations committed during the conflict.

In April 2014, the Commission of Enquiry on Disappearances, Truth and Reconciliation Commission Act, 2014 was passed and the two TJ commissions, the TRC and CIEDP, were established in 2015 amid clear warnings of their likely failure. The law to establish them was passed at midnight, under strict party whips, without any parliamentarian being able to comment, let alone victims and civil society being consulted. This was a clear signal that the political parties did not want the Commissions to succeed. It is alleged that the law was passed to buy time; stall ongoing court cases related to past crimes and/or divert them out of the criminal justice system into the TJ process.<sup>10</sup>

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<sup>5</sup> Recommendation by Czech Republic

<sup>6</sup> Recommendation by Uruguay

<sup>7</sup> UPR Action Plan 2016-2011 Matrix Nepali available at: [https://www.opmcm.gov.np/wp-content/uploads/2018/03/UPR-Action-Plan-2016-2011\\_Matrix\\_Nepali.pdf](https://www.opmcm.gov.np/wp-content/uploads/2018/03/UPR-Action-Plan-2016-2011_Matrix_Nepali.pdf)

<sup>8</sup> Section on Transitional Justice and Conflict Victims, UPR Action Plan 2016-2011 Matrix Nepali, [https://www.opmcm.gov.np/wp-content/uploads/2018/03/UPR-Action-Plan-2016-2011\\_Matrix\\_Nepali.pdf](https://www.opmcm.gov.np/wp-content/uploads/2018/03/UPR-Action-Plan-2016-2011_Matrix_Nepali.pdf)

<sup>9</sup> Section on Transitional Justice and Conflict Victims, UPR Action Plan 2016-2011 Matrix Nepali, [https://www.opmcm.gov.np/wp-content/uploads/2018/03/UPR-Action-Plan-2016-2011\\_Matrix\\_Nepali.pdf](https://www.opmcm.gov.np/wp-content/uploads/2018/03/UPR-Action-Plan-2016-2011_Matrix_Nepali.pdf)

<sup>10</sup> <https://www.icj.org/wp-content/uploads/2018/10/Nepal-UPR-report-Advocacy-Non-Legal-Submission-2018-ENG.pdf>

The victims had challenged different sections of the TRC Act in the Supreme Court, central to the mandate and powers of the TRC, including the Commission's powers to recommend amnesty even to those involved in grave violations (including international crimes), to initiate mediation/reconciliation between victims and perpetrators irrespective of the nature of crime and the non-recognition of victims' rights to justice among others. On this basis, national and international organizations and the UN requested the Government of Nepal not to establish the commissions pending the decision of the Supreme Court.<sup>11</sup> However, ignoring these genuine requests and concerns, the Government established the two commissions, appointing the commissioners amidst much controversy.

The TRC received more than 60,000 complaints and the CIEDP about 3,000 cases. Apart from registering these complaints from the victims, the commissions did not do much with the information. Not a single case has been finalized. The Government in February 2019 allowed the mandate of the first set of commissioners of both commissions to lapse.

The end of the mandate of these commissioners once again had provided an opportunity for the Government and the political parties to bring the TJ process on track. Victims and civil society articulated clearly that the Government should start consultations on different aspects of the bill, amend the Act respecting the Supreme Court rulings, and then appoint the Commissioners under the new Act. Ignoring the calls from victims and civil society organisations (both national and international), the Government appointed the Recommendation Committee on 25 March 2019 to recommend new commissioners. Victims, civil society and international actors expressed grave concern about the lack of impartiality, independence and transparency in the existing procedure for the appointment of the commissioners and called to cease the process.<sup>12</sup>

Victims and civil society called for consultations and amendment of the law before the Recommendation Committee recommended any candidates. In January 2020, the government suddenly organized 'consultations' in all seven provincial headquarters on one day (13 January 2020) with much haste, and without much transparency and clarity, giving no time for victims and civil society to prepare, with some victims deciding to

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<sup>11</sup> Advocacy-Forum Nepal 'Briefing Paper on The State of Transitional Justice in Nepal', published in February 2019,, <<http://www.advocacyforum.org/downloads/pdf/publications/tj/af-briefing-paper-february-2019-english.pdf>>.

<sup>12</sup> Amnesty International, the International Commission of Jurists (ICJ), Human Rights Watch, and TRIAL press statement of 29 July 2019; ICJ, Amnesty International, Human Rights Watch and TRIAL International, press statement of 26 November 2019, <https://www.hrw.org/news/2019/11/26/nepal-13-years-no-justiceconflict-victims>, Accountability Watch Committee (AWC), press release of 9 July 2019, <<http://advocacyforum.org/downloads/pdf/press-statement/2019/awc-statement-on-tj-process-english.pdf>>, Advocacy-Forum Nepal, 'Briefing Paper on Fake Transitional Justice Consultations: How Long Can The Government Fool Victims?', p.7., <<http://www.advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf>>

disengage from the process, others terming them ‘fake consultations’.<sup>13</sup> Victims and civil society argue that these consultations were held just to show the international community, while the State was preparing its report for the UPR, that consultations were held and that the two TJ commissions have been functioning and will address past human rights violations.<sup>14</sup>

After the ‘consultations’, the Government swiftly proceeded to appoint new commissioners on 18 January 2020, but without amending the laws as repeatedly demanded by the victims and civil society. This takes us back to square one, where Nepal was in 2014. At that stage, the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) had written to the Government of Nepal publicly about its inability to support these commissions established under the Commission of Enquiry on Disappearances, Truth and Reconciliation Commission Act 2014, many sections of which violate Nepal’s international obligation.<sup>15</sup>

On 16 March 2020, five Special Procedures bodies wrote to the Government of Nepal to express concern regarding the reported lack of impartiality, independence and transparency in the procedure for the appointment of the members of the TRC and CIEDP; the reported lack of progress in the work undertaken by both commissions; and the possible amendment of the Act. They urged Nepal to clarify if consultations regarding the amendment of the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014) with conflict victims had been effective and participatory.<sup>16</sup>

Responding to the Joint Communication from Special Procedures, on 12 June 2020, the Government of Nepal stated that it is developing the Amendment Bill based on the consultation report, demands submitted by the victims' representative organizations and the suggestions and feedback from the international community, including the relevant UN bodies. Consultations at the higher political level are also underway. However, the outbreak of the COVID-19 pandemic has considerably affected the process. Thus, there is risk exists that the Government using the threat of COVID -19 using as an excuse not to

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<sup>13</sup> Joint letter of Special Procedures, 12 April 2019, <[https://www.ohchr.org/Documents/Issues/Truth/OL\\_NPL\\_1\\_2019.pdf](https://www.ohchr.org/Documents/Issues/Truth/OL_NPL_1_2019.pdf)>

<sup>14</sup> Advocacy-Forum Nepal, ‘Briefing Paper on Fake Transitional Justice Consultations: How Long Can The Government Fool Victims?’, published in February 2020, p.5-7. <<http://www.advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf>>

<sup>15</sup> Advocacy-Forum Nepal, ‘Briefing Paper on Fake Transitional Justice Consultations: How Long Can The Government Fool Victims?’ published in February 2020, p. 20. <<http://www.advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf>>

<sup>16</sup> See, for instance, OHCHR Technical Note on The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) as Gazetted 21 May 2014

make any progress on this issue.<sup>17</sup>

### *Recommendations*

- (i) Cease the work of the ongoing commissions and start wider consultations before amending the Act;
- (ii) Ensure any amendments to the TRC Act bring it fully in line with the Supreme Court rulings of 2014, 2015 and May 2020, and applicable international legal standards;
- (iii) Ensure transparency and wider consultation with victims and civil society in respect of all steps taken to deliver TJ as committed to in the CPA;
- (iv) Ensure that all new TRC and CIEDP members are appointed after the amendments to the law;
- (v) Take measure to ensure those appointed have required qualifications, and are fully independent and impartial.

## **EFFECTIVE REMEDIES FOR VICTIMS**

Using the two TJ commissions, the Government has prevented victims from having access to the regular justice system and has thus denied victims their right to an effective remedy for more than 15 years.

Victims of torture, sexual abuse, extra-judicial killings and enforced disappearances are prevented from accessing the regular justice system, with politicians, police and prosecutors arguing that those cases will be dealt by the TJ bodies, i.e. the TRC and the CIEDP.

On the one hand, these mechanisms are established but have no capacity (legal, legitimacy, support, independence, and competency); on the other hand, the Government argues that the conflict-era cases should be investigated and dealt by these special bodies. Thus, in essence, victims are denied access to truth, justice and reparation.

The Human Rights Committee in a number of cases<sup>18</sup> has held the view that non-judicial commissions like the TRC and CIEDP do not replace state obligations and that States have to investigate, prosecute and punish those responsible for grave human rights

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<[https://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical\\_Note\\_Nepal\\_CIDP\\_TRC\\_Act2014.pdf](https://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf)>.

<sup>18</sup> Joint Communication of Special Rapporteurs, 16 March 2020,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25109>

violations through judicial processes.<sup>19</sup> However, the Government of Nepal is not only ignoring these views but is getting away with doing so without any accountability despite sitting as a member of the Human Rights Council.

In some rare high-profile cases, such as the case of Maina Sunuwar,<sup>20</sup> the district court has convicted those responsible for murder. However, the convicted army officers have continued to enjoy impunity, as the Government has not arrested them despite a Court order. Instead, the Army Headquarters has filed a writ petition in the Supreme Court seeking nullification of the district court judgment arguing that the case comes from the conflict period and should be dealt only by the TJ mechanisms.<sup>21</sup> This case that is detrimental to the conflict victims' access to judicial process has been kept in limbo as the Supreme Court has been postponing its hearing more than 8 times.

Furthermore, in some cases, investigation and prosecution have been done with the aim of letting the alleged perpetrators off the hook. The case of Krishna Prasad Adhikary, who was abducted and tortured to death in June 2004 by the then Maoist cadre in Chitwan district, is a case in point.<sup>22</sup> Despite mounting public pressure, including hunger strikes for months by his mother and father seeking independent investigation, no proper measures have been put in place reopening the investigation on the case. The father, Nanda Prasad Adhikary died in hospital after refusing to eat and drink for 334 days, as the Government failed to ensure effective investigation on the case. The mother, Ganga Maya, continues her hunger strike from her hospital bed for the last 7 years seeking the same action by the government.<sup>23</sup> The Government's apathy in providing effective remedies for victims has forced many victims to take extreme measures, including hunger strikes leading to their death.

### ***Recommendations***

- (i) Make sure the non-judicial bodies (TJ Commissions) do not prevent judicial proceedings and allow impartial investigations and prosecutions of those responsible for gross violations of human rights;
- (ii) Respect court orders and ensure those sentenced of the murder of Maina Sunuwar are made to serve their sentences;

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<sup>19</sup> Response of Government of Nepal to the Joint Communication by Special Procedures, [https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35339&fbclid=IwAR2ICF-J4hUEL2oKzYTZOUEgrC73bjMRLYuEKzq--oaw\\_J31O6MHibjEDlw](https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35339&fbclid=IwAR2ICF-J4hUEL2oKzYTZOUEgrC73bjMRLYuEKzq--oaw_J31O6MHibjEDlw)

<sup>20</sup> <http://realrightsnow.org/en/campaign/>

<sup>21</sup> See *Chaulagain v. Nepal* (CCPR/C/112/D/2018/2010), para. 6.3; *Sedhai v. Nepal* (CCPR/C/108/D/1865/2009), para. 11.4; *Bolakhe v. Nepal* (CCPR/C/123/D/2658/2015), para. 6.5

<sup>22</sup> Advocacy-Forum Nepal, 'Maina Sunuwar: Separating Fact from Fiction,' First Edition 2010 < <http://advocacyforum.org/downloads/pdf/publications/maina-english.pdf>>

<sup>23</sup> On 1 September 2017, the Office of Prad Vivak of Nepal Army, filed a writ of certiorari along with prohibition in the Supreme Court. Rule 2 (c) of Court Martial Rules, 2064 (2008) defines the Office of Prad Vivak as the "office of military headquarters where the Chief of the Prad Vivak has been based, and the term shall also indicate the battalion Prad Vivak branch and Brigade Prad Vivak branch.

- (iii) Review the investigation of case of Krishna Prasad Adhikary and bring all those responsible to justice.

## **PROMOTION OF ALLEGED PERPETRATORS UNDERMINES THE RULE OF LAW**

Disrespecting the victims' pains and sufferings, pending arrest warrants against the perpetrators, the Government has appointed many alleged perpetrators to higher position. One of such example is the appointment of an alleged perpetrator Agni Sapkota as the [Speaker](#) of the Federal Parliament in January 2020. Mr. Sapkota, a member of parliament and standing committee member of the ruling Nepal Communist Party (NCP) has been charged with the abduction and killing of [Arjun Lama](#)<sup>24</sup> in Kavre district in 2005. Despite the pending arrest warrant issued by the police, he was elected as member of the parliament and then nominated by the party for the speaker of the parliament.<sup>25</sup>

Nepal's political parties, especially the NCP, seems to prioritize those accused of human rights violations to be in public posts as a tactic to silence victims, demoralize human rights defenders and weaken the judiciary. Judges have become helpless as party leaders openly defy court orders and they are not in a position to do anything about it.

When Sapkota was appointed the Minister of Information and Communication in May 2011, the UNOHCHR [issued a statement](#)<sup>26</sup> stating that states have a responsibility "to ensure that the name of a person is fully cleared following a thorough investigation before any appointment to a high public office is announced." Leading human rights activists, including ex-Commissioners of the National Human Rights Commission of Nepal, filed public interest litigation challenging this appointment.<sup>27</sup> The Supreme Court instructed the police and government to proceed with the criminal investigation and to provide updates every 15 days to the Court.<sup>28</sup> However, the prosecutors and police have never complied with this order.

### ***Recommendations***

- (i) Suspend those in power against whom cases are pending before Courts to ensure the independence of investigations.

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<sup>24</sup> <http://www.advocacyforum.org/emblematic-cases/2013/09/krishna-adhikari.php>

<sup>26</sup> Save Gangamaya <https://www.youtube.com/watch?v=hZA7hWLw3hE&t=2s>

<sup>27</sup> On *Purnimaya Lama vs. Office of Prime Minister and Council of Ministers et al.* (2011), Writ no. 069-WO-0533; Advocacy Forum-Nepal and Human Rights Watch, 'Waiting for Justice', published in 2008, <https://www.hrw.org/report/2008/09/11/waiting-justice/unpunished-crimes-nepals-armed-conflict>; Advocacy Forum-Nepal and Human Rights Watch, 'Still Waiting for Justice', published in 2009, <https://www.hrw.org/report/2009/10/16/still-waiting-justice/no-end-impunity-nepal>

<sup>28</sup> <https://www.amnesty.org/en/latest/news/2020/01/nepal-recent-steps-undermine-transitional-justice/>

- (ii) Introduce vetting in public institutions to remove those involved in gross human rights violations from public office.

## DISCRIMINATION IN INTERIM RELIEF

In the previous UPR, a number of countries raised the concerns, Nepal accepted to address the discrimination in the distribution of relief<sup>29</sup>, yet discrimination against victims of torture and sexual violence in interim relief continues to exist.

Hundreds of women and girls of all ages were subjected to widespread and systematic violence from both parties to the conflict.<sup>30</sup> One of the commitments made in the CPA was that the parties would provide special protection to the rights of women and take immediate action to prevent violence against women.<sup>31</sup> But as the country progressed, these commitments were not kept as a widespread climate of impunity hindered any victim of gender-based violence from seeking justice.

Not even a single case of gender-based violence during armed conflict has been properly investigated and prosecuted.<sup>32</sup> Purnimaya Lama (name changed), one of the victims of sexual violence has been fighting for justice for years now, but Government has failed to provide any sort of relief to her.<sup>33</sup> In the letter to Nepal of 12 April 2019, five UN Special Procedures pointed out the failure of both TJ Commissions to make significant progress in the identification of perpetrators of grave violations, including sexual violence and rape against women and girls.<sup>34</sup> In this context where past crimes of gender-based violence are yet to be prosecuted, an increase in cases of violence against women and girls trapped at home with abusers has been reported during the COIV-19 pandemic.<sup>35</sup>

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<sup>29</sup> OHCHR, 'UN concerned over appointment of Cabinet Minister alleged to have committed human rights violations', Press Statement of 5 May 2011  
<[https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202011/May/2011\\_05\\_05\\_P\\_R\\_Agni\\_Sapkota\\_E.pdf](https://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202011/May/2011_05_05_P_R_Agni_Sapkota_E.pdf)>

<sup>30</sup> *Purnimaya Lama vs. Office of Prime Minister and council of ministers and others* (2011), Writ no. 069-WO-0533

<sup>31</sup> Supreme Court of Nepal, Justice Baidyanath Upadhyaya gave an order on November 26, 2012 in *Purnimaya Lama vs. Office of Prime Minister and council of ministers and others*, (2011), Writ no. 069-WO-0533.

<sup>32</sup> <https://www.icj.org/wp-content/uploads/2018/10/Nepal-UPR-report-Advocacy-Non-Legal-Submission-2018-ENG.pdf>

<sup>33</sup> <http://inseconline.org/en/forum/violence-against-women-during-armed-conflict>

<sup>34</sup> See part 7 of the CPA, Women and Child Rights, art. 7.6.1. "Both sides fully agree to protect the rights of the women and children in a special way, to immediately stop all types of violence against women and children, including child labour as well as sexual exploitation and abuse

<sup>35</sup> [https://saathi.org.np/wp-content/uploads/2018/10/Desk-Review-Report\\_NAP.pdf](https://saathi.org.np/wp-content/uploads/2018/10/Desk-Review-Report_NAP.pdf)

A draft 2<sup>nd</sup> National Action Plan (NAP) for the implementation of the UN Security Resolutions 1325 and 1820 on Women, Peace and Security is taking final shape after the completion of consultations at provincial, local and national levels.<sup>36</sup> It is a matter of time to see if this NAP II will be implemented fully as committed by the Government or will be just another paper commitment of the Government to securing justice for women.

## **IMPUNITY FOR PAST CRIMES PROMOTES CONTINUATION OF HUMAN RIGHTS VIOLATIONS**

In addition to the lack of accountability for the widespread human rights violations during the armed conflict (1996 – 2006), impunity remains a serious concern even in recent cases demonstrating that “present impunity is the result of past impunity”.<sup>37</sup>

The government has failed to investigate and take action against police officers responsible for killing at least 40 demonstrators during protests against the promulgation of the Constitution in 2015.<sup>38</sup> In September 2016, the then government had set up a high-level inquiry commission, the Lal Commission, to investigate the killings. The Commission handed over its report to the then Prime Minister in December 2017. However, despite repeated calls from national and international actors, including UN Special Rapporteurs, the report has not been made public.<sup>39</sup>

This non-publication of reports of Commissions is not a new phenomenon in Nepal. Many reports of previous commissions of inquiry have similarly never been published.<sup>40</sup> Among them are the reports on excessive use of force during demonstrations in the Terai region in 2007 – 2008.<sup>41</sup> It is clear that Nepal’s politicians use the Commissions of Inquiry Act, 1969 to divert calls for accountability and delay any arrests and prosecutions. Even after a year, no investigation has been conducted into the extrajudicial execution in custody of [Kumar Poudel](#) in June 2019. This is despite a NHRC report

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<sup>36</sup>[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/CCPR\\_C\\_119\\_D\\_2245\\_2013\\_26\\_000\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/CCPR_C_119_D_2245_2013_26_000_E.pdf)

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[https://www.ohchr.org/Documents/Issues/Truth/OL\\_NPL\\_1\\_2019.pdf?fbclid=IwAR0vnb7O9xNwsfgetMfbzrQcMXzcHU74qXuOcCd-WS2H-HSQIK1VYevOhc4](https://www.ohchr.org/Documents/Issues/Truth/OL_NPL_1_2019.pdf?fbclid=IwAR0vnb7O9xNwsfgetMfbzrQcMXzcHU74qXuOcCd-WS2H-HSQIK1VYevOhc4)

<sup>38</sup> <https://www.nepalitimes.com/latest/in-nepal-lockdown-a-domestic-violence-spike/>

<sup>39</sup> <https://www.np.undp.org/content/nepal/en/home/presscenter/articles/2020/the-long-run-to-justice11.html>

<sup>40</sup> National Human Rights Commission, “Kathmandu Declaration on Addressing Impunity and Realizing Human Rights in South Asia of 11<sup>th</sup> April 2018”, <

[http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/1796837524Kathmandu\\_Declaration\\_on\\_Addresssing\\_Impunity\\_Final.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/1796837524Kathmandu_Declaration_on_Addresssing_Impunity_Final.pdf)>

<sup>41</sup> Human Rights Watch, “Like We Are Not Nepali”. Protest and Police Crackdown in the Terai Region of Nepal of 2015’, <[https://reliefweb.int/sites/reliefweb.int/files/resources/nepal1015\\_forupload\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/nepal1015_forupload_0.pdf) >; Asian Human Rights Commission and THRD Alliance, “Nepal Protest and Repression - State Responsibility for 37 Killings During Protests in Terai”, of 2016, <[http://www.thrda.org/wp-content/uploads/2016/06/Protest\\_And\\_Repression\\_in\\_Terai.pdf](http://www.thrda.org/wp-content/uploads/2016/06/Protest_And_Repression_in_Terai.pdf) >

concluding that he was shot dead after arrest and recommending that the government filed criminal charges against the police officials involved in his killing. In February 2020, the Home Minister finally directed the Nepal Police to implement the commission's recommendation to investigate the allegations.<sup>42</sup> Nevertheless, the police have not even accepted the formal complaints filed by the family members of Kumar Poudel, which makes it clear that they have no intention to investigate the incident. Rather, the family members of the victim were threatened over phone as well as in-person not to take up the issue and initiate legal proceedings on the incident.

### ***Recommendations***

- (i) Investigate all allegations of excessive use of force and bring those responsible to justice;
- (ii) Investigate all cases of extra-judicial killings and bring those responsible to justice;
- (iii) Make the Lal Commission report public, implement its recommendations and ensure victims and society's right to know the truth;
- (iv) Make intimidation, threats and reprisals against victims and witnesses a criminal offense and take measures to prevent any pressure on them;
- (v) Establish independent investigation mechanisms to ensure impartial investigations of all human rights violations.

### **FAILURE TO PROTECT**

There have been repeated reports of police failing to protect victims of human rights abuses and to properly investigate complaints of such abuses. One case concerns Nirmala Panta, a 13-year-old girl who was raped and murdered in western Nepal at the end of July 2018. The case prompted outrage, leading to a number of public rallies calling for justice for Nirmala. Reports suggest that the pattern of police negligence, including the alleged mishandling, even destruction, of evidence and the wrongful arrest and alleged beating of a man suspected of the crime, has significantly hindered the investigative process. During her visit, the Special Rapporteur on Violence against Women expressed grave concern about reports suggesting that numerous cases related to sexual violence and the killing of women and girls have resulted in impunity for the perpetrators, despite having been referred to the police or a court for redress.<sup>43</sup>

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<sup>42</sup> The Kathmandu Post, "Human Rights Watch Calls on Nepal Government to Make Public Lal Commission Report", 3 October 2019, <https://kathmandupost.com/national/2019/10/03/human-rights-watch-calls-on-nepal-government-to-make-public-lal-commission-report>; Tika R. Pradhan, "Supreme Court Directs Information Commission to Respond To Writ Regarding Lal Commission Report", The Kathmandu Post, 18 October 2019, <https://kathmandupost.com/national/2019/10/18/supreme-court-directs-information-commission-to-respond-to-writ-regarding-lal-commission-report>

<sup>43</sup> International Commission of Jurists, 'Commissions Of Inquiry In Nepal: Denying Remedies, Entrenching Impunity', published in June 2012, p. 7, <https://www.icj.org/wp-content/uploads/2012/06/Nepal-Commissions-of-Inquiry-thematic-report-2012.pdf>

A particularly egregious allegation of rape involves the then Speaker of the Parliament, Krishna Bahadur Mahara, who was charged in late October 2019 with attempted rape of a member of staff of the Parliamentary Secretariat.<sup>44</sup> Although the woman alleged to have been raped by Mahara called the police at night, immediately after the event, police did not intervene on time to protect the evidence. Subsequently, the woman retracted her allegations, many believe because of pressure. Mahara was acquitted in late February 2020.<sup>45</sup>

### ***Recommendations***

- (i) Establish an independent police commission to prevent political interference in the appointment, transfer and promotion of police and to take internal disciplinary action against police officers who fail to uphold their duty to investigate crimes;
- (ii) Improve the investigatory capacity of the Nepal Police by equipping the police with modern technology and methods of investigation, evidence analysis, and protection;
- (iii) Bring to justice officers failing to fulfil their obligation by lack of professionalism and negligence causing serious violations;
- (iv) Prevent all intimidation and pressures on victims and witnesses.

## **NO REPARATION FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS**

In the years after the end of the conflict, the Government of Nepal provided ‘interim relief’ to some conflict victims. The scheme had many problems, including the exclusion of victims of torture and sexual violence.<sup>46</sup> ‘Interim relief’ was confined to the families of those killed and disappeared and the displaced. In addition, the legal understanding of reparation is limited to compensation and social rehabilitation.<sup>47</sup>

The Penal Code that came into force in August 2018 also fails to embrace victims’ right to reparation.

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<sup>44</sup> Advocacy Forum-Nepal ‘Briefing Paper on The State of Transitional Justice in Nepal’, published in February 2019, p. 7, <<http://www.advocacyforum.org/downloads/pdf/publications/tj/af-briefing-paper-february-2019-english.pdf>>

<sup>45</sup> THRDA, ‘Extrajudicial killings on rise: Bring those responsible to justice’, published on 4 July 2019, t <<http://www.thrda.org/situation-update/extrajudicial-killings-on-rise-bring-those-responsible-to-justice/>>; Binod Ghimire, "Home Minister Mised Parliament Over Extrajudicial Killing of Kumar Paudel", The Kathmandu Post, 7 February 2020, <<https://kathmandupost.com/national/2020/02/07/home-minister-mised-parliament-over-extrajudicial-killing-of-kumar-paudel>>

<sup>46</sup> Report of Special Rapporteur visit, A/HRC/41/42/Add 2, 19 June 2019, para 37-8

<sup>47</sup> <<https://hr.parliament.gov.np/uploads/attachments/qjqlspj3dc3f27ez.pdf>>

The Torture Compensation Act, which has been in place since 1996, provides for a maximum of 100,000 Rupees (about 800US\$) as compensation for victims of torture and many victims have filed complaints seeking compensation. Despite hundreds of Court orders, many victims have not actually received the compensation awarded to them. For example, since the TCA came into force, AF assisted 152 victims to file a petition seeking compensation. In 46 cases (30.26%), the Court found victims had been subjected to torture and ordered compensation. However, despite the Court orders, 39 have not received any compensation, despite many years having passed since the rulings in a large number of these cases. Furthermore, the government has so far failed to incorporate satisfaction, restitution and guarantees of non-repetition, additional crucial aspects of reparation, into the legal framework.<sup>48</sup> Victims are left with no effective reparation.

### ***Recommendations***

- (i) End discrimination in providing ‘interim relief’ to the victims of the armed conflict;
- (ii) Ensure victims’ right to reparation, taking appropriate legal measures;
- (iii) Amend the legal understanding of reparation and bring it in line with international standards of reparation;
- (iv) Enact comprehensive legislation that criminalizes all gross human rights violations, ensures their investigation and prosecution and provides reparation to victims of human rights violations.

### **COVID-19 AND ITS IMPACT ON TJ PROCESS IN NEPAL**

The lockdown imposed by the Government of Nepal from 24 March 2020 to deal with Covid-19 that has been engulfing the whole world has adversely affected the lives of many people, including conflict victims. In particular, conflict victims who are daily wage earners are hit hard economically as they have to be without work during lockdown making it difficult for them to manage basic needs, like food and medicines. Victims who were already deeply demoralized because of continuous lies and acts of betrayal from the Government are reporting that they are feeling more hopeless now the Government is using the Covid-19 pandemic as an excuse to delay justice even more. The Supreme Court on 26 April 2020 had rejected the Government’s plea, registered in 2015 seeking to review its own verdict against amnesties for grave conflict-era crimes and had ordered the Government to amend the Enforced Disappearance Enquiry, Truth and Reconciliation

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<sup>48</sup> T. Pradhan, “Mahara Cleared Of All Charges By Kathmandu District Court”, The Kathmandu Post, <https://kathmandupost.com/national/2020/02/17/mahara-cleared-of-all-charges-by-kathmandu-district-court>.

Commission Act-2014 as it failed to adhere to the principles of TJ and international practices. However, as of mid-July 2020, the Government has not taken any steps towards implementation and rather has been using Covid-19 as an excuse. The TJ process is being overshadowed during the pandemic leaving victims and civil society in uncertainty and chaos.

## **COVID-19 PANDEMIC AND ITS EFFECTS ON HUMAN RIGHTS**

In June 2020, AF published a briefing paper on the human rights impact of COVID-19.<sup>49</sup> The suspension of basic human rights, such as freedom of expression, movement, association and peaceful assembly as one of the measures to curb the spread of COVID-19 may have been justifiable in the initial phase, but there are concerns that the government will be reluctant to reinstate those rights after the end of the pandemic.

The main human rights concerns during the crisis include:

- Excessive use of force by the police to impose the lockdown, physically assaulting people coming out of their home for an essential purpose such as health workers;
- Encroachment on the freedom of expression of the public as well as journalists with journalists threatened, barred from reporting and even reprimanded;
- Lack of access to basic food and medical services for daily-wage earners, due to loss of income;
- Irregularities in relief distribution, with even death to starvation in one (known) incident; - Refusal of treatment by private hospitals;
- Lack of essential equipment in government designated hospitals;
- Poor handling and cremation of dead bodies;
- Poor condition of quarantine facilities, lacking basic facilities of clean drinking water, nutritious food and safety.

Apart from these impacts on human rights, COVID-19 has a serious implication on the criminal justice system. During the lockdown, the police refused to register even complaints related to serious crimes suggesting the complainant returns after the lockdown is lifted. Police have kept suspects in detention, without a warrant of the courts beyond the legal limit, risking unlawful detention, as the courts are only open to writs of *habeas corpus* and cases related to COVID-19. Despite the order of the Supreme Court to release those prisoners serving imprisonment of less than a year, the district courts have repeatedly refused to release such prisoners, which means overcrowding in prisons has continued. Juveniles who are entitled to be released on parental custody have also been

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<sup>49</sup> Advocacy Forum Nepal “Discrimination and Irregularities. The Painful Tale of Interim Relief in Nepal”, published in 2010  
<[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)>; Elena Naughton, ICTJ “Pursuing Truth, Justice and Redress in Nepal: An Update on the Transitional Justice Process”, published in February 2018,

affected as they often could not be released, as their parents were unable to appear before the courts due to travel restrictions.

Prisoners and juveniles in child correction homes (CCHs) are forced to live in overcrowded places, increasing the risk of infection.<sup>50</sup> This has also caused a psychological impact of fear for their safety among those in state custody. It is impossible to maintain physical distancing in CCHs as they are overcrowded with 10 children on average sharing one single room.

### ***Recommendations***

- (i) Put human rights at the center while dealing with COVID-19;
- (ii) Prioritise improving the health services in line with international standards;
- (iii) Ensure that there is no discrimination in the response to COVID-19 and undertake immediate remedial measures when there is;
- (iv) Ensure that vulnerable gets special attention taking into account their needs;

Advocacy Forum –Nepal (AF-Nepal), Accountability Watch Committee (AWC), Amnesty International-Nepal, Centre for Legal Studies (CLS), Conflict Victims’ Common Platform (CVCP), Conflict Victims’ National Alliance (CVNA), Conflict Victims Women National Network (CVWN), Conflict Victims Society for Justice (CVSJ-Nepal), Forum for Protection of People’s Rights Nepal, Forum for Women, Law and Development (FWLD), Human Rights and Justice Centre (HRJC), Justice and Rights Institute Nepal (JURI- Nepal), Legal Aid and Consultancy Centre Nepal (LACC), Nagarik Aawaz (NA), National Network of Disabled Conflict Victims, National Network of Families of Disappeared (NEFAD), Nepal Peacebuilding Initiative, Public Defender Society of Nepal (PDS), Terai Human Rights Defenders Alliance (THRD Alliance), Transcultural Psychosocial Organization Nepal (TPO), The Story Kitchen, and Voice of Women Media.