

UNITED NATIONS HUMAN RIGHTS COUNCIL

The 37th Session of the Working Group on the Universal Periodic Review

**VICTIM GROUPS' JOINT SUBMISSION TO THE UNIVERSAL
PERIODIC REVIEW OF NEPAL¹**

9 July 2020

I. INTRODUCTION:

1. We, the victims' groups, welcome this opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Nepal. We have come together to jointly express our concerns over the protracted lack of progress in dealing with the conflict-era human rights violations.
2. We have been desperately waiting for truth, justice and reparations since the signing of the Comprehensive Peace Agreement (CPA) in 2006 that ended the decade-long armed conflict. As reported in OHCHR's Nepal Conflict Report, 2012, the armed conflict caused death of about 16,729 persons; displacement of about 78,689 persons; disappearance of about 1,327 people.² We value the third UPR of Nepal as a significant opportunity to inform the world community about longstanding denial of our right to effective remedy guaranteed under the international law and our own Constitution of Nepal (2015).³
3. Through this submission, we would like to draw the attention of the Human Rights Council and the Working Group to the Government of Nepal (GoN)'s persistent failure on delivering truth, justice, reparation and institutional reform. During the reporting period, we have felt and witnessed that the GoN continues to remain unwilling to genuinely implement the recommendations made in the UPR 2015⁴ in relation to:

- i) the establishment of credible transitional justice (TJ) mechanisms;**
- ii) amendment of the TJ legislation consistent with the Supreme Court rulings and international standards;**
- iii) criminalization of certain serious crimes under international law consistent with international standards;**
- iv) consultation with and participation of victims in the transitional justice processes;**
- v) ending impunity through ensuring prompt, independent and thorough investigation and prosecution;**
- vi) ensuring adequate reparations and protection for the victims;**
- vii) vetting of those involved in human rights violations; and**
- viii) ratification/accession of additional human rights instruments as a non-recurrence measure.**

4. In this submission, we conclude with a set of concrete recommendations and finally call for adopting the suggested recommendations towards addressing the following concerns.

II. KEY OF OUR CONCERNS:

Transitional justice mechanisms

5. The commitment made in the CPA⁵ to deal with the past through establishing a credible transitional justice (TJ) process has been subsequently reproduced in the Interim Constitution of Nepal 2007,⁶ other political agreements,⁷ election manifestos,⁸ the address of the incumbent Prime Minister KP Sharma Oli in the UN General Assembly⁹ and finally the Foreign Minister Pradeep

Kumar Gyawali's address to the High-Level Segment of the 40th Session of Human Rights Council.¹⁰ However, there remained protracted lack of genuine political will to turn such a commitment into a reality. After the commitment was made in the CPA, 13 years have already elapsed without any tangible result.

6. Last five years¹¹ have become distressful for us. In particular, we are frustrated by the pervasive political interference in appointments of TJ commissioners, arbitrary functioning of TJ commissions, and failure of both TJ commissions to complete an investigation of even a single conflict-era case.

7. The TJ commissions - the Commission on the Investigation of Enforced Disappeared Persons (CIEDP) and the Truth and Reconciliation Commission (TRC) - established on 10 February 2015 did not achieve anything remarkable other than merely registering the complaints. The CIEDP registered 3,197 complaints¹² of which 689 complaints were delisted after the preliminary investigation. 2,507 complaints await for the comprehensive investigation. To the disappointment of the victims, CIEDP arbitrarily transferred, without any proper investigation, 414 complaints to the TRC stating that the complaints were related to the victims of killings. The TRC registered 62,950 complaints and claimed that it completed verification of 3,615 complaints.¹³ None of the complaints have been resolved. The TRC even failed to get the interim relief scheme rectified to include victims of conflict-related sexual violence (CRSV) and torture.

8. The complaint receiving and registering process initiated by both the TJ commissions was also seriously flawed in many respects. Some of the key findings of monitoring¹⁴ of the process by victims' groups are as follows:

- Complaints were registered through the politically influenced local peace committees.
- Victims were not properly informed of the purpose and implications of registering the complaints and providing relevant documents.
- The templates prescribed for filling out to file a complaint were not victims friendly.
- Many victims failed to reach out to district headquarters due to the lack of geographical remoteness, seasonality and their restricted physical mobility. Some of the victims had to spend four days to reach to the headquarters.
- No efforts were made to reach out to victims of sexual violence and many of such victims were unable or hesitant to come out and file complaints due to social stigma and lack of protection.
- The security and protection remained a key concern for many victims because the representatives or relatives of perpetrators were part of the peace committees in many districts.
- The victims consulted, reported that they were under a kind of surveillance from the security personnel and political parties meant to deter them from filing complaints.
- In some districts the Chief District Officers (CDOs) had asked for the details about the complaints.
- In some districts, the political parties had asked the victims belonging to their parties not to name perpetrators in their complaints.
- As there were no procedures to protect the information and evidences provided by the victims, they became hesitant to name perpetrators and indicate the evidences that they had.

- Though many victims were traumatized to recall their past experiences, there was no arrangement for psychosocial counselling.
- Language was also a barrier for many victims. The complaints could be filed only in Nepali language and no provision was made for submitting the complaints in victim's mother tongue.

9. Throughout the reporting period, both TRC and CIEDP lacked credibility and independence as the officials were selected on the basis of political consideration regardless of the candidates' competence, experience and credibility. The victims' groups and CSOs had repeatedly requested the GoN and the Recommendation Committee to wait for the Supreme Court's verdict on a writ petition filed by a group of 234 conflict victims from across Nepal challenging the constitutionality of the legislation (See below No 12 and 13 for detailed analysis about the issues concerning TJ legislation). However, the GoN and the Recommendation Committee went ahead to appoint the people of their choice merely on the basis of political considerations.

10. Failing to learn lessons from the past mistakes and ignoring the voices raised by the stakeholders,¹⁵ GoN took a regressive step by appointing another set of commissioners in January 2020 upon the recommendation of the Recommendation Committee that picked up the names agreed by top political leaders.¹⁶ Such a politically guided appointment has further jeopardized the credibility of the transitional justice process.

11. Since NHRC had also been calling for credible TJ process, we had hoped highly that NHRC, with its commissioner Mr. Prakash Osti in the Recommendation Committee, would try its best to check the political interference in the selection process. However, despite repeated calls from the victims' groups and CSOs, he unfortunately endorsed the politically guided selection process. We, therefore, call on the Human Rights Council and the Working Group to express concern over the role of Nepal's NHRC in this regard.

Transitional Justice Legislation

12. Let us take the Working Group to the history of what actually went wrong in terms of setting national legal standards governing transitional justice in Nepal. The then Maoist-led GoN had set aside the two separate bills¹⁷ prepared in consultation with stakeholders and submitted to the Parliament in 2009 and arbitrarily introduced an Ordinance¹⁸ to provide a legal framework for transitional justice. The victims together with CSOs had initiated a litigation in the Supreme Court (SC) challenging the Ordinance's several provisions permitting amnesties for serious crimes and coercive reconciliation between victim and perpetrator.¹⁹ In response, the SC explicitly ruled out the possibility of granting amnesty for serious crimes and ordered the GoN for a consultative and participatory process of amending the law by creating an expert team. In response, the GoN had formed an Expert Task Force consisting of victim representatives and the Task Force drafted three different bills relating to TRC, CIEDP and criminalization of enforced disappearance and submitted them to the GoN.²⁰ However, setting aside the suggested bills, the GoN enacted the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) without fixing the flaws of the Ordinance. The Act attracted another PIL, *Suman Adhikari and others v. Government of Nepal*²¹, filed by a group of 234 victims that challenged several provisions

including in relation to amnesty. On 26 February 2015, the Supreme Court struck down the amnesty provisions and ordered the government to review the Act in light of its previous rulings and the international standards.

13. Despite the recommendations made in the 2011 and 2015 UPR and repeated calls of the stakeholders²² to amend law consistent with the Supreme Court rulings, there has been continued failure to rectify the flawed legislation. Rather, being intolerant with the SC ruling of 26 February 2015, the GoN had lodged a petition in accordance with the Cabinet decision dated 16 April 2015, which has been rejected by the Supreme Court on 27 April 2020.²³ Therefore, the GoN can take no excuse to bypass its obligation to immediately amend the legislation. Amidst pressure from stakeholders, a draft TRC Act prepared without consulting the stakeholders was released by the Ministry of Law, Justice and Social Welfare in June 2018 and the bill had attracted overwhelming criticisms from a wide range of stakeholders about several provisions that, among others, provide for lineal punishment against those guilty of serious crimes. The GoN has had no response to the concerns over the bill and nothing has been made public as to what happened with that bill. Ridiculously, the succeeding Law Minister publicly disowned the bill. Though a special court was envisioned for adjudication of the conflict-era offences, nothing has progressed to provide for necessary legal framework.

Consultations and Participation

14. Contrary to UN Secretary General Guidance to "ensure the centrality of victims in the design and implementation of transitional justice processes and mechanisms"²⁴ and repeated call from Special Mandate to "guarantee the broad and effective consultation with victims in the process of amendment of the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014)",²⁵ we often were behaved by the GoN, TRC and CIEDP as mere service seeker not as stakeholder in the whole process. During the reporting period, victims were rarely consulted about the transitional justice policy issues and whenever consultations were made, they were ill-intended and mechanically performed merely to generate an evidence to present before the international communities or UN agencies. We the victims' groups, CSOs including Accountability Watch Committee (AWC) and several international human rights organizations' repeated calls²⁶ for the consultations and participation of victims in the process were fully ignored.

15. The recent provincial consultations held on 13 January 2020 on the transitional justice legislation were hastily organized lasting only three hours without allowing adequate time for meaningful participation by victims' groups and civil society.²⁷ Our demands for meaningful consultation²⁸ and participation was totally ignored. A civil society report²⁹ has also revealed the facts that those consultations were hasty, ill-considered and faulty in terms of selecting participants, maintaining transparency and openness and informing the participants of the detailed agenda prior to the consultation. As a consequence, the consultations further aggravated mistrust between the GoN and victim's community.

16. The Expert Task Force created to draft TJ related bills in view of the guidance given by the Supreme Court ruling of 2 January 2014 was the only mechanism that had consisted victims' representatives.³⁰ Unfortunately, the GoN fully ignored the draft bills suggested by the Task Force.

Impunity/accountability

17. During the reporting period, climate of impunity for conflict-era violations has deepened further due to the protracted criminalization of politics and politicization of crime. Despite the guarantee of equal protection of law since the promulgation of 1990 Constitution, our right to justice was frequently subjected to a number of legislative and de facto measures of impunity including state-sponsored absence of laws criminalizing serious violations, denial of criminal investigation into FIR, withdrawal of criminal prosecution, pardoning, restrictive statute of limitation, non-compliance with judicial decisions³¹ and NHRC recommendations. The climate of impunity would be further aggravated if the flawed amnesty provisions of the current transitional justice legislation are not rectified.

18. Though accurate data is not available; a tentative estimation is that there are more than 200 FIRs concerning the conflict-era crimes pending in District Police Offices. As frustratingly shared by Phadindra Luitel, a FIR filed in the Okhaldhunga district police office about the brutal killing of his father Guru Prasad Luitel, a teacher in Okhaldhunga, in 2003 continues to remain unaddressed.³² The GoN's continued inaction is in many instances where NHRC has recommended investigation and prosecution. For example, the NHRC recommendation dated 17 July 2012 to investigate the killing of Mukti Nath Adhikari, a school teacher in Lamjung, continues to remain disregarded. Moreover, despite the repeated judicial orders in many other cases,³³ the GoN has not taken any effective steps to ensure criminal accountability. Only few cases were taken forward in a mechanical way with a view to avoid contempt of court proceeding. The case of a 15-year-old Maina Sunuwar who was tortured to death in military custody is an example in which the authorities failed to enforce repeated court summons, and an arrest warrant for the three army officers charged. The officers were subsequently sentenced to life imprisonment in absentia³⁴, but the GoN has not yet located the convicted thereby offering them protection from the jail sentence. Contrary to the court order for immediate arrest of a Maoist leader and former parliamentarian Bal Krishna Dhungel convicted for a conflict-era murder case, he had long bypassed accountability due to the political protection and was arrested only after a contempt of court was initiated against the police chief for failing to act. However, Dhungel subsequently succeeded to enjoy pardon of the life imprisonment by the President.³⁵ Systematically defying the repeated court rulings and benefiting from the lack of progress on criminal investigation into the killing of Arjun Lama, CPN leader Agni Sapkota succeeded to become the Speaker of the House of Representatives.³⁶ A petition demanding prevention of his appointment is sub-judice at the Supreme Court.³⁷

19. Though the adoption of the Integrated Legal Aid Policy 2020 is a welcoming step, there has not been any specific legal aid program to enable the conflict victims to access justice. The GoN's initiation towards drafting the National Action Plan on Women, Peace and Security Phase-II is also a praiseworthy step towards recognizing the need of special attention to the victims of sexual violence. However, no concrete steps have so far been taken to ensure truth, justice and reparations for them. The restrictive statute of limitation in relation to rape has served as a measure to promote impunity for conflict-era rape cases.³⁸ In a case *Purna Maya v. Nepal*,³⁹ as well as in its recent concluding observations on Nepal (2018), the Human Rights Committee (HRC) found the statute of limitation on rape as an obstacle in accessing justice and called for removing it. After her visit

to Nepal in November 2018, the UN Special Rapporteur on Violence against Women, Its Causes and Consequences Ms. Dubravka Šimonović also recommended Nepal to ensure the limitation period that is "sufficient and commensurate with the gravity of the offence".⁴⁰

20. Ganga Maya Adhikari's continued hunger strike for bringing those accused of killing her son Krishna Adhikari in 2004 to justice is illustrative of how the conflict victims' confidence on the criminal justice system has eroded. Her husband Nanda Prasad Adhikari died on 22 September 2014 after 334 days long hunger strike. While asked about the ritual of the dead body of Nanda Prasad protected in a hospital, she said: "As my husband's dead body is demanding justice, how could I perform death ritual?"⁴¹

21. Weakening oversights against the arbitrary executive actions are also contributing in deepening impunity. The NHRC has been made a weaker institution including through interfering in its autonomy and independence, and systematically bypassing its recommendations. The government has strived for further weakening the NHRC through amending the NHRC Act in such a way as to entrust the Attorney General with a discretionary power to set aside NHRC recommendations for prosecutions and confining the NHRC's physical presence in the federal capital only.⁴² While NHRC has also failed to effectively act on the complaints lodged by the conflict victims, the NHRC's inquiry into the complaints and its recommendations in the conflict-era cases have often been superficial. The implementation of the NHRC's recommendation for ensuring criminal accountability against those responsible for conflict-era violations has not been effective due to the lack of effective inquiry prior to the recommendations, absence of continued follow up on the implementation and the GoN's unwillingness to prioritize implementation.⁴³

22. If and when needed to protect criminals connected to political parties from punishment, the withdrawal of criminal case was extensively used in the past⁴⁴ and the scope of its use in the future remains intact.

Interim relief, reparations and protection of victims

23. The GoN's approach to interim relief has been discretionary as it has not been recognized as a right of the victims. As a part of the interim relief scheme, an interim compensation was provided to the families of "disappeared" or "killed". But, victims of conflict related of sexual violence (CRSV)⁴⁵ or torture were systematically excluded from the relief scheme. Though the GoN was called upon to rectify its exclusionary approach, this hasn't been the case yet. The non-availability of reparative measures has created an obstacle for victims in accessing justice.

24. Though there are a plethora of reparative needs of the victims⁴⁶ based on nature and types of victimization, the government has persistently failed to address them. One of the studies conducted by the conflict victims themselves⁴⁷ has documented a list of problems and concerns raised by victims on the ground: growing economic hardship and livelihood crisis; feeling of being neglected and excluded among victims of torture and CRSV; lack of identification, acknowledgment and memorialization; ineffectiveness of self-employment schemes; lack of access to psychosocial counselling; struggling to have access to treatment for victims of torture or with disability; no monitoring and assessment of their situation on the ground; reparation not

guaranteed as a rights under the TRC/CIEDP Act and Regulations; non-recognition of those victimized due to landmine explosions post CPA and non-availability of micro-credit and soft loan schemes.

25. The 2007 SC ruling ordering a remedy against the unlawful seizure of property has not been complied yet.⁴⁸ Instead, it is noticeable that CPM leaders at different level have strived to get the seized properties legalized.⁴⁹ Though it was reported time and again that many wives of those forcibly disappeared during the conflict were facing hurdles in obtaining legal titles to their husbands' property,⁵⁰ no legal measures have been taken to address their problems.⁵¹ Many of the teachers and government employees who lost jobs due to the conflict-related displacement are frustrated at the continued lack of the GoN's response to their problems.⁵² Ongoing COVID19 pandemic has further worsened the socio-economic condition of the conflict victims. However, the GoN hasn't given any priority to the conflict victims in terms of incentives, reliefs, and assistance.⁵³ The voices raised by the former Maoist child shouldered for their recognition, compensation and justice remains unheard.⁵⁴

26. By virtue of the core minimum elements of economic, social and cultural rights guaranteed under the ICESCR and the Constitution, the GoN is bound to take immediate measures regardless of the transitional justice process. The GoN should therefore be categorically called upon to take immediate measures to respond "specific" and "common" reparative needs of the victims.

27. Non-existence of any formal protection system mandated to provide on regular basis and lack of necessary protections to the conflict victims and witnesses has posed a challenge for those victims who want to approach justice mechanisms. Fear of insecurity persists among those victims who have approached for justice.⁵⁵ A legislation with the objective to protect victims of crime has recently been adopted.⁵⁶ However, it does not have specific provisions targeting the conflict victims vulnerable to threats, intimidation, harassment and fear of insecurity.

Vetting

28. We had a hope that the GoN would exclude perpetrators of gross human rights violations from promotion, nomination and appointment to public posts. However, things have unfolded exactly in the opposite direction. Vetting was completely ignored in the context of local, provincial and federal elections held under the 2015 Constitution.

29. The recent appointment of Agni Sapkota, who is suspected for ordering a killing of an innocent citizen Arjun Lama of Kavre District, as the Speaker of House of Representatives is a recent example of how the victim's legitimate demand for accountability was undermined. The expression "Now I have lost all hope of justice" was an immediate reaction by Purni Maya Lama, wife of Arjun Lama, to the Sapkota's appointment.⁵⁷ Together with Purni Maya Lama, entire victims' community in Nepal felt dishonored and betrayed due to his appointment before completion of the criminal investigation pending in the Karve District Police Office. Earlier in 2011, Agni Sapkota had been appointed as the Information Minister amidst oppositions by victims' groups and other stakeholders.⁵⁸

30. Previously, many perpetrators of gross human rights violations serving security forces had proudly enjoyed their promotions. Kuber Singh Rana, who is suspected for enforced disappearance and extrajudicial killing of five students from Dhanusha district,⁵⁹ was promoted to the rank of Nepal's Inspector General of Police in September 2012. The NHRC had concluded its investigation, implicating Rana⁶⁰ and others and the Supreme Court had also ordered the authorities to carry out criminal investigations into the FIR⁶¹ dated 29 January 2008. However, the process of criminal investigation and prosecution has so far stalled indefinitely due to his undue influence over the authorities. Colonel Raju Basnet's promotion in July 2012 is also noteworthy here. Despite the credible evidence of systematic enforced disappearances and torture at Bhairabnath Battalion headquarters in Kathmandu, found by OHCHR and the NHRC, under the command of Basnet, in 2003, he was promoted from Colonel to the rank of Brigadier General.

31. There has so far been zero compliance with the Supreme Court's repeated rulings⁶² that recognized vetting as one of the measures of transitional justice. Especially, in *Sunil Ranjan Singh & Ors. v. Government of Nepal & Ors.*, the Government was ordered to formulate necessary law on vetting and adopt a temporary guideline for vetting public officials.

Criminalization of human rights violations

32. Nepal has consistently failed to enact national laws criminalizing serious crimes including enforced disappearance, torture and war crimes consistent with international standards. Such a gap of law remains a key barrier to access justice by victims of serious crimes committed during the conflict.⁶³

33. The Supreme Court has repeatedly ordered the GoN to remove barriers for criminal accountability against serious crimes through making necessary laws:

- *Rajaram Dhakal v. Office of the Prime Minister*⁶⁴: Enact a national legislation criminalizing war crimes consistent with Geneva Conventions.
- *Rabindra Dhakal case*⁶⁵: Enact law criminalizing enforced disappearance consistent with international standards⁶⁶ with a scope for retrospective prosecution.
- *Rabindra Ghimire v. Office of the Prime Minister*⁶⁷: Enact law criminalizing torture consistent with the Convention against Torture.

Cognizant of the continued failure to enact these laws, the Supreme Court in *Madhav Kumar Basnet and others for JuRI-Nepal v. Government of Nepal* and *Suman Adhikari and others v. Government of Nepal*⁶⁸ had ordered the GoN to implement its previous decisions. Despite the repeated judicial interventions, a restrictive statutory limitation on rape (one-year) continues to pose a barrier in accessing justice by victims of rape.⁶⁹

34. The enactment of a new Criminal Code⁷⁰ effective from 17 September 2018 has criminalized torture⁷¹ and enforced disappearance⁷², but these provisions with prospective effect don't address the conflict-era violations for the following reasons:

- Lack of definitions of enforced disappearances and torture consistent with applicable international standards;

- Failure to recognize the continuous nature of enforced disappearance;
- Failure to criminalize enforced disappearance as a crime against humanity;
- Penalties don't correspond to nature and gravity of enforced disappearance and torture;
- Provision of an excessively restrictive statute of limitation period (six month) to prosecute torture and enforced disappearance.
- No provision to allow retroactive application of the penal provisions

Ratification of treaties as a measure of non-recurrence

35. We, the conflict victims, are not only concerned about truth and justice in relation to the past human rights violations but also concerned about securing non-recurrence of them against future generation. Recommendations were made in the 2011 UPR and 2015 UPR calling upon Nepal to prioritize ratifying numerous instruments including Rome Statute of International Criminal Court (ICC) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED). But they were not supported by the GoN. In addition, immediately after signing of the CPA, the reinstated House of Representatives had instructed the GoN to ratify the Rome Statute of ICC.⁷³ The Supreme Court had stressed the need to ratify ICPED.⁷⁴ The GoN has so far not taken any step towards ratifying these instruments and thereby preventing and deterring heinous crimes in the future.

Cooperation with Thematic Procedures

36. Despite the UPR recommendations,⁷⁵ the GoN has also not been supportive towards facilitating the oversight of human rights mechanisms. GoN hasn't sent standing invitation to thematic special procedures of the HRC, 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.

III. RECOMMENDATIONS

Recommendations:

37. In light of the above-mentioned concerns, we, the victims groups call upon the Working Group on the UPR and the Human Rights Council to make the following recommendations to the GoN:

a) Bring the transitional justice process back on the right track including through taking following steps:

- 1. Hold transparent, meaningful and wider consultations/dialogue with victims, civil society, NHRIs and other stakeholders on pressing issues (e.g. amendment of law, independence and impartiality of TRC and CIEDP, immediate reparative needs) pertaining to transitional justice.**
- 2. Amend the 2014 TJ Act without any delay in line with the SC rulings and international human rights obligations to outlaw amnesties and other *de facto***

measures of impunity in the context of serious crimes and provide adequate framework for independence of entire transitional justice process.

3. Reappoint TRC and CIEDP commissioners in a fair, transparent and inclusive manner in accordance with the amended TJ Act.
4. Ensure adequate resources to TRC and CEIDP for enabling them to carry out their mandate effectively.

b) Adopt a separate guideline in view of the international best practices to engender consultations and participation of victims in the transitional justice process.

c) Recognize reparations as a right and take measures to address "common" and "specific" reparative needs of the victims.

d) Immediately put an end to longstanding exclusionary approach to interim relief program and provide victims of CRSV and torture with the interim compensation.

e) Adopt a separate policy in consultation with the victims, CSOs and NHRIs to employ a holistic reparation program.

f) Prioritize the conflict victims as one of the priority beneficiary clusters in terms of relief and assistance measures in the context of COVID-19 pandemic.

g) Take immediate measures to address the problems faced by the wives and children of those who were forcibly disappeared when transferring their husbands' or fathers' property.

h) Ensure return of their properties to the internally displaced peoples without further delay and provide them with adequate compensation.

i) Take necessary legal and institutional measures to ensure effective and proactive victim and witness protection.

j) Ensure that serious crimes including enforced disappearance, torture and war crimes are criminalized under national legislation consistent with international standards and SC rulings.

k) Amend the Muluki Criminal Code or introduce a separate law against torture and enforced disappearance with punishments commensurate to the nature and gravity of the crime, non-applicability of statute of limitation for both and recognizing the continuous nature of the crime of enforced disappearance consistent with international standards.

l) Take measures to provide compensation and restitution for teachers and government employees who lost their jobs due to the conflict-related displacement.

- m) Take legislative and programmatic measures to complete longstanding task to manage former Maoist child combatants including through ensuring their recognition, compensation and justice.**
- n) Introduce necessary laws and guidelines for vetting to prevent those implicated for serious human rights violations from holding public office and being promoted.**
- o) Bar legislative or de facto obstacles (e.g. statutory limitation, pardons, and withdrawal of cases) on imposing criminal accountability against those allegedly responsible for serious crimes including torture, enforced disappearance and rape.**
- p) Ensure prompt and effective investigation into FIRs in relation to conflict-era crimes and prosecute against those responsible for crimes.**
- q) Bring to justice those including the incumbent Speaker of the House of Representative who bypassed the criminal accountability undermining the sanctity of judicial orders for investigation and prosecutions.**
- r) Remove restrictive statute of limitation on rape and pave the way for investigation and prosecution of conflict-era crimes of rape.**
- s) Proactively reach out to identify the victims of sexual violence and torture as well as ensure their meaningful participation in all stages of transitional justice processes.**
- t) Ensure full compliance with the SC rulings requiring the GoN to address conflict-era violations consistent with international human rights standards.**
- u) Ensure prompt endorsement of second National Action Plan on Women, Peace and Security and allocate adequate financial and human resources for its effective implementation.**
- v) Ratify the Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute of the ICC and OPCAT.**
- w) Extend full cooperation with the Human Rights Council including through accepting requests for visits by special mandate holders.**
- x) Ensure the effective functioning of the NHRC including through amending the NHRC Act and ensuring the implementation of its recommendations in accordance with the Paris Principles.**

1 Conflict Victims Common Platform (CVCP), Conflict Victims National Alliance (CVNA), Conflict Victim Women National Network (CVWN), National Network of Disabled Conflict Victims (NNDCV), Conflict Victims Orphans Society (CVOS), Conflict Victims Society for Justice (CVSJ), Conflict Victims Committee,

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- Bardiya, Society of the Families of Disappeared Nepal Maoist Victims Association, Conflict Victims and Farmer Rights Society, Kailali, Disabled Conflict Victims Association, Dolakha, Conflict Affected Peoples Concerns Society Dang, Bandurmudhe Ghatana Sarokar Samiti, Conflict Victims Teachers Society, Conflict Victims Self-Employment Skill Training Centre Nepal, Conflict Victims' National Society, Conflict Management and Displaced Concern Centre, Discharged People's Liberation Army Nepal, Guru Luitel Study and Development Center, Muktinath Adhikari Memorial Foundation, Maina Bal Bikash Samiti, Rina Apain Smiriti Pratisthan, Ganesh Ujjan Foundation, Bhairab Memorial Foundation, Gorkha, Laxmi Acharya Memorial Trust, Jajarkot Martry Bashistha Koirala (Sureshchandra) Memorial Foundation, Sindhuli Manilal Memorial Trust, Myagdi, Nandalal Koirala Memorial Trust, Gorkha, Ra.Si.Pa. Memorial foundation, Arghakhachi, Peace Envisioners, Shiva Prasad Bhatta Memorialization, Gorkha, Martyr Jaya Bahadur Rawal Memorial Foundation, Jajarkot, Martyr Tikaraj Aran Memorial Foundation, Ramechhap, Hari Bhakta Memorial Foundation, Rukum, Martyrs, and Disappeared Warrior Children Foundation, Martyr Dasarath Thakur Memorial Trust, Rajbiraj, Bhupendra Memorial Trust Nepal, Martyr Ajablaal Yadav Memorial Trust, Dhanusha, Bhupendra Smriti Pratisthan Nepal, Banke, Conflict Victims Women Network, Banke.
- 2 Available at: https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf
 - 3 Article 21 of the Constitution of Nepal guarantees the right to justice together with social rehabilitation and compensation.
 - 4 The GoN fully supported recommendations (e.g. 121.28, 122.4, 122.5, 122.63, 122.14, 122.59, 123.1, 123.2, 123.21.) made by Canada, Switzerland, Belgium, Czech Republic, India, Denmark, Germany, Norway, New Zealand, Australia, United Kingdom, Northern Ireland, Panama and Cyprus respectively.
 - 5 Clauses 5.1.6, 5.2.4, 5.2.5, 7.1.3 and 8.4.
 - 6 Article 33 (S) & (Q) of the Interim Constitution, 2007.
 - 7 For example, 23-point Agreement between the Top Leaders of the Seven-Party Alliance date 23 Dec 2007, para 6.
 - 8 TJ has always been an elements of election manifestos of ruling and major opposition party.
 - 9 Delivered in 73rd Session of the UN General Assembly.
 - 10 Delivered on 27 February 2019.
 - 11 Since the establishment of the TJ Commissions on 10 Feb 2015.
 - 12 CIEDP's Report on Four Years Performance 2076 BS.
 - 13 TRC Bulletin, issue 2, year 3, 2075 BS.
 - 14 CVCP report on the monitoring of the complaint filing process, 9 June 2016.
 - 15 CVNA press release dated 14th August, 2019, AWC Press release dated 9th July 2019 demanding for amendment of law prior to appointment of the commissioners.
 - 16 The Kathmandu Post, Conflict victims condemn parties for bulldozing decision on transitional justice appointments. Available at: <https://tkpo.st/37ixAbOhttps://kathmandupost.com/national/2020/01/18/conflict-victims-condemn-parties-for-bulldozing-decision-on-transitional-justice-appointments>
 - 17 Section 25 of the TRC bill had a clear provision excluding killings after taking someone under control; killing of an unarmed person, torture; rape; disappearance and abduction and hostage taking from the scope of amnesty.
 - 18 "Commission on Investigation of Disappeared Person, Truth and Reconciliation Ordinance – 2069 (2013)"
 - 19 Madhav Basnet for JuRI-Nepal v. Government of Nepal and Ram Kumar Bhandari and Others v. Government of Nepal, decisions dated 2 January 2014.
 - 20 Report of the Expert Task Force submitted to the Ministry of Peace Reconstruction, dated 3 April 2014.
 - 21 Decision dated 26 February 2015.
 - 22 Joint submission on amendment of TJ legislation (2014) by victims and CSOs submitted to the then Prime Minister Puspa Kamal Dahal dated 18th November, 2016; Joint statement by CVCP and AWC on 2nd February, 2017;
 - 23 Review Petition lodged by the Government of Nepal dated 26 April 2015.
 - 24 GUIDANCE NOTE OF THE SECRETARY-GENERAL, United Nations Approach to Transitional Justice. https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf
 - 25 See, latest communication of 16 March 2020 by Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences: <https://spcommreports.ohchr.org/TmSearch/Results>

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- 26 For example, CVCP submission & press statement opposing politically controlled selection process dated 22nd November 2019 and 13th January, 2020, and CVNA suggestions for credible consultation issues on 12th January, 2020. Accountability Watch Committee (AWC)'s press statement for appointment of the officials of CEIDP and TRC only after amendment of legislation, 9 July 2019.
- 27 <https://thehimalayantimes.com/kathmandu/consultations-held-with-stakeholders-amid-rift-among-victims/>
- 28 CVNA statement demanding for credible consultation dated 12th January, 2020; NNDCV press statement demanding inclusion of all categories of conflict victims in the consultation dated 10th January, 2020.
- 29 Advocacy Forum, BRIEFING PAPER, FAKE TRANSITIONAL JUSTICE CONSULTATIONS: HOW LONG CAN THE GOVERNMENT FOOL VICTIMS?, February 2020.
- 30 See, Report of the Expert Task Force mandated to draft bills concerning Truth and Reconciliation Commission and Commission on Inquiry into Disappeared People submitted to the Ministry of Peace Reconstruction, dated 2070-12-20 (BS).
- 31 NJA, Study Report on Execution Status of Supreme Court and Appellate Court Orders/Judgments relating to Transitional Justice 2016,
- 32 Conversation with Phadindra Luitel dated 15 March 2020.
- 33 For instance, *Devi Sunuwar v. District Police Office, Kavrepalanchok* (writ No. 0641 of 2007), *Purnimaya Lama v. District Police Office Kavrepalanchok* (Writ No. 1231 of 2004), *Jayakishor Lav v. District Police Office Dhanusha* (writ No. 063-wo-0681).
- 34 In April 2017, the Kavre district court sentenced three responsible NA officials to life imprisonment.
- 35 Presidential pardon granted on 29 May 2018. <https://kathmandupost.com/valley/2018/05/29/murder-convict-dhungel-gets-presidential-pardon>
- 36 Elected unopposed on 26 January 2020.
- 37 *Dinesh Tripathi v. Agni Sapkota and others*, filed on 24 January 2020.
- 38 Section 229 of the General Criminal Code, 2017 sets out a one-year limitation period for investigation and prosecution of rape. Previously it was 35 days and subsequently extended to 6 months through amendment in the Muluki Ain (General Code).
- 39 Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2245/2013. Available at: <http://ccprcentre.org/decision/16791>
- 40 Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2245/2013.
- 41 Niti Bimarsha, a co-publication of Sikchak Masik, 02, Chaitra 2076 (BS).
- 42 NHRC (1st Amendment) Act, 2076 (B.S), Section 5&7.
- 43 NHRC's one pager decision and recommendation dated 17 July 2012 to carry out investigation into the FIR in relation to the killing of Mukti Nath Adhikari and the continued lack of follow up on the implementation is illustrative of the ineffective exercise of NHRC's power to push for accountability.
- 44 OHCHR-Nepal, Legal Opinion on Remedies and Rights Revoked: Case Withdrawals for Serious Crimes in Nepal, June 2011, page 1 & 2.
- 45 CVWN press release highlighting the plight of CRSV victims even after 13 years of CPA dated 16th February, 2020.
- 46 Paper by Suman Adhikari, Founder Chairperson, Conflict Victims Common Platform Addressing Reparation Rights of Conflict Victims in Nepal, a paper prepared for CVCP.
- 47 CVCP, Advocacy Paper, Reparative Needs, Rights and Demands of Victims of the Armed Conflict in Nepal, May 2018. <https://thehimalayantimes.com/kathmandu/paper-on-reparative-needs-of-victims-unveiled/>
- 48 *Bhoj Raj Timilsna v. the Council of Minister et al.*, Writ No. 0920 of 2006 (2063 BS); *Liladhar Bhandari & Ors. v. Government of Nepal & Ors.* (Case No. 0863/2064).
- 49 जनसत्ताको लिखतलाई सरकारी मान्यता, <https://ekantipur.com/pradesh-6/2020/01/04/157812609084863742.html>; जनसत्ताका लिखत वैधता दिने पक्षमा सभामुख, <https://www.setopati.com/from-paper/133700>
- 50 Committee on Economic Social and Cultural Rights, Concluding Observations of the Committee on Economic Social and Cultural Rights: Nepal, UN Doc. E/C.12/NPL/CO/2 (2008), para. 36.
- 51 Such a problem was initially reported in UN OHCHR, CONFLICT-RELATED DISAPPEARANCES IN BARDIYA DISTRICT, December 2008.
- 52 Consultation with victims' groups in Kathmandu, 6 July 2020.
- 53 Consultation with victims' groups in Kathmandu, 6 July 2020. Consultation with representatives of former Maoist child combatants, 7 July 2020.

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- 54 The Kathmandu Post, Former child soldier files petition at UN Human Rights Office demanding justice: <https://kathmandupost.com/national/2019/06/07/former-child-soldier-files-petition-at-un-human-rights-office-demanding-justice-20190607191754>
- 55 Consultations with representatives of victims' groups in Kathmandu dated 15 March 2020.
- 56 Crime Victim Protection Act 2018 came in force on 18 September 2018.
- 57 Nepali Times, Speechless: <https://www.nepalitimes.com/latest/speechless/>
- 58 In May 2011, OHCHR issued a statement 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.”
- 59 The five students who were subjected to enforced disappearance and killed are Sanjeev Karna, Durgesh Labh, Jitendra Jha, Shailendra Yadav, and Pramod Mandal.
- 60 An exhumation was also carried out by the Nepal Police with NHRC assistance in 2010-11 uncovered five male bodies, blindfolded and shot summarily.
- 61 Supreme Court order dated July 13, 2011.
- 62 *Rajendra Dhakal v. the Government of Nepal, Liladhar Bhandari v. the Government of Nepal and Sunil Ranjan Singh v. the Government of Nepal. Rajendra Dhakal v. the Government of Nepal, Liladhar Bhandari v. the Government of Nepal and Sunil Ranjan Singh v. the Government of Nepal.* For detailed discussion about the judicial response to transitional justice issues in Nepal, see Raju Prasad Chapagai & Pankaj Karna, Accountability for Conflict-Era Human Rights Violations in Nepal: An Appraisal of Strategic Human Rights Litigation, Pages 197-219 in "Shifting Horizons of Public International Law: A South Asian Perspective" (Editors: Kaul, J. L., Jha, Anupam (Eds.). <https://www.springer.com/gp/book/9788132237228>
- 63 There is absence of national laws criminalizing serious international crimes including genocide, crime against humanity, torture and enforced disappearance.
- 64 Writ no 2942 of the year 2059 (2002), decision dated 9 January 2004.
- 65 Altogether 28 writ petitions were filed with the Supreme Court on different dates (from 21 January 1999 to 27 July 2006) under Art 23 and 88 of the Constitution of the Kingdom of Nepal 1990 in relation to several incidents of disappearance in the context of armed conflict.
- 66 Nepal is not a party to this convention. Available at:
- 67 Writ No3219 of the year 2062 (2005), decision dated 17 December 2007.
- 68 Writ petition no 0050 of the year 2070(BS), decision dated 26 February 2015
- 69 Section 229 of the Muluki (General) Criminal Code 2017.
- 70 The Muluki Criminal Code 2017 approved by the President on October 16, 2017 came into force from September 17, 2018.
- 71 Section, 167.
- 72 Section, 206.
- 73 A commitment motion was adopted to instruct the GoN dated 25 July 2006.
- 74 *Rabindra Prasad Dhakal v. Nepal Government, Council of Ministers, et. al.*, Writ No.3575, registered on 21 January 1999.
- 75 Recommendation (124.9; 24.11, 124.13 and 124.14) to extend a standing invitation to special procedures didn't enjoy support of the GoN.