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**Annual report of the United Nations High Commissioner
for Human Rights and Reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Nepal: Continued impunity for human rights violations

More than five years since the end of the armed conflict in Nepal, international monitoring mechanisms established to scrutinise progress in the peace process have effectively ceased to function, despite the failure to conclude the peace process and establish the agreed-upon transitional justice mechanisms. Following the expiry of the mandate of the UN Mission in Nepal in January 2011, the Government of Nepal (GON) in December of the same year declined to extend the mandate of the Office of the High Commissioner for Human Rights in Nepal (OHCHR), notwithstanding calls to the contrary by Nepali civil society and political parties, as well as other national and international organisations. The National Human Rights Commission has also been weakened by a law that impacts on the mandate, functions and powers of the institution.¹

Over the same period, not a single perpetrator of a conflict-era human rights violation has been prosecuted and held to account. Instead, there has been renewed talk of an amnesty for serious crimes under international law, including gross human rights violations committed during the conflict. Such developments raise concerns about Nepal's commitment to ensuring truth, justice and reparations to victims. The GON's failure thus far to take specific action to implement recommendations pertaining to accountability for conflict era rights violations made during Nepal's Universal Periodic Review (UPR) a year ago raises further doubts about its commitment to respecting, protecting and ensuring the realization of human rights.²

Amnesty provisions in transitional justice legislation

Legislation creating a Truth and Reconciliation Commission (TRC) and Commission on Disappearances, both agreed to by the parties to the 2006 Comprehensive Peace Agreement, is still pending in the Legislative Committee of the Parliament. Meanwhile, senior government officials and political party leaders have publicly called for an amnesty for crimes perpetrated by individuals from both State and Maoist forces during the conflict. As current versions of the Bills do not include amnesty provisions for serious crimes, the Parliamentary Committee has referred the matter to a high-level political mechanism consisting of senior party leaders, where it has been reported that two of the three major political parties have agreed to the granting of an amnesty.³ Such developments go against public commitments made by the GON during its review under the UPR process.⁴ National and international human rights organizations have spoken out against such attempts, and the High Commissioner for Human Rights has warned that the granting of a blanket amnesty would place Nepal in contravention of its international treaty obligations.⁵

¹ See A/HRC/19/21/Add.4 (2012), para 32.

² See A/HRC/17/5 (2011) and A/HRC/17/5/Add.1 (2011).

³ See, for example: Kamal Raj Sigdel, "Transitional justice mechanisms: Parties leaning more towards reconciliation", eKantipur.com, 15 December 2011 (at: <http://www.ekantipur.com/2011/12/15/editors-pick/transitional-justice-mechanisms--parties-leaning-more-towards-reconciliation/345549.html>); "Transitional justice: Parties go for blanket amnesty", eKantipur.com, 17 December 2011 (at: <http://www.ekantipur.com/2011/12/17/top-story/transitional-justice-parties-go-for-blanket-amnesty/345662.html>).

⁴ See A/HRC/17/5 (2011), para 89.

⁵ See, Press Release: UN: Transitional Justice Process must comply with International Law, 13 September 2011, (at <http://nepal.ohchr.org/en/resources/Documents/English/pressrelease>); and A/HRC/19/21/Add.4 (2012), para 14.

Proposed pardons, and the appointment of alleged rights violators to Government

In addition to efforts at introducing a general amnesty for serious crimes committed, the GON has made a series of decisions in the past year to appoint and promote to official positions and to pardon individuals who have been implicated in grave human rights abuses. This raises serious concerns about the Government's commitment to justice and the rule of law, particularly as these moves contravene international standards that state:⁶

“Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions... Persons formally charged with individual responsibility for serious crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings.”

In May and November 2011, Agni Sapkota and Constituent Assembly member Surya Man Dong were appointed Minister of Information and Communications and Minister of State for Energy respectively, despite being under investigation and having outstanding arrest warrants issued against them for the murder of Arjun Lama. In June 2011, Kuber Singh Rana was promoted to the position of Additional Inspector General of the Nepal Police despite his alleged involvement in the abduction and subsequent murder of five Maoist cadres, for which both the NHRC and a police investigation panel found him responsible. Durj Kumar Rai was promoted to the position of Additional Inspector General of the Armed Police Force in November 2011 despite his direct implication by the Rayamajhi Commission for unlawful violence resulting in the deaths of pro-democracy protestors in April 2006.

Also in November 2011, the Cabinet recommended that Constituent Assembly member Bal Krishna Dhungel, who was convicted in 2004 on murder charges and sentenced to life imprisonment, be pardoned. Although the Supreme Court has issued a stay order, pending the Court's decision on the constitutionality of the recommended pardon, Dhungel continues to attend meetings of Parliament and is publicly seen with senior government officials.

Lack of investigations and withdrawal of cases

The criminal justice system has not effectively responded to complaints filed by victims of human rights violations. Police often refuse to register First Information Reports on grounds that they will be dealt with by the proposed TRC. In cases where complaints are registered, the police often do not conduct meaningful investigations or adequately prepare cases for prosecution.

Since the end of the conflict, the Government has withdrawn as many as 500 criminal cases against political party cadres, including two senior members of the Cabinet. While acting as Home Minister, Krishna Bahadur Mahara publicly stated that conflict-era cases should be withdrawn from the courts, and that ongoing cases against Agni Sapkota and Nepal Army Major Niranjan Basnet, who has been implicated in the killing of Maina Sunuwar,⁷ may be among the cases withdrawn despite a Supreme Court ruling that any withdrawal must be

⁶ Principle 36, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc E/CN.4/2005/102/Add.1 (2005).

⁷ See: Press release, Seventh Anniversary of the Killing of Maina Sunuwar, 16 February 2011, (at <http://www.hrw.org/news/2011/02/16/nepal-seventh-anniversary-killing-maina-sunuwar>).

subject to an independent review by the courts. Such statements by the Government also contradict its own commitment, and public acceptance of UPR recommendations to combat impunity.⁸

National institutions remain weak in Nepal and the rule of law is frequently traded off for political considerations, manifested by attempts at introducing an amnesty for serious crimes, recruitment and promotion of persons alleged to be complicit in human rights violations for service in Government, defiance by officials of Supreme Court judgments, and withdrawal criminal cases from the legal process. In this context, there is a risk that impunity will be institutionalized. The departure of the OHCHR is likely to further weaken the system of human rights protection. Persistent subversion of the rule of law, coupled with a weak human rights protection regime, will only undermine the democratisation process.

Call for action

The International Commission of Jurists urges the Human Rights Council to call on the Government of Nepal to:

- Immediately establish a Truth and Reconciliation Commission and a Commission of Inquiry on Disappearances, as required by the Supreme Court's decision of June 2007, in accordance with international standards, and explicitly excluding the possibility of amnesties for gross human rights violations and serious international humanitarian law violations and other crimes under international law;
- Conduct prompt and thorough investigations into alleged cases of past human rights violations, prosecute and punish their perpetrators, and suspend from office public officials convicted of, or alleged to have been involved in, serious crimes, pending credible, impartial and independent investigations;
- Recognize the jurisdiction of the civilian courts and surrender to them all military officials, and call on the Maoist Party to cooperate with criminal investigations and surrender cadres allegedly involved in serious human rights violations;
- Implement the Supreme Court's decision of June 2007, which ordered the Government to enact a law to criminalize and punish enforced disappearance in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance and other international standards;
- Invite the relevant Special Procedures, including the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on torture, the Special Rapporteur on summary and extrajudicial executions, and the newly established Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to undertake official missions to Nepal; and extend to them all reasonable cooperation and assistance to facilitate timely and effective missions;
- Take immediate measures to implement the UPR recommendations that it has accepted.

⁸ Above note 3, paras 10, 51 and 106.38.