

To:

Sushil Koirala, President of the Nepali Congress Party, NC

Jhala Nath Khanal, Leader of the Communist Party of Nepal, (Unified Marxist-Leninist), CPN-UML

Puspa Kamal Dahal "Prachanda", Leader of the Unified Communist Party of Nepal, Maoist, UCPN(M)

And elected members of the Constituent Assembly from the following parties:

Rastriya Prajatantra Party Nepal, RPP-N

Madhesi Jana Adhikar Forum, Nepal (Loktantrik)

Rastriya Prajatantra Party, RPP

Madhesi Jana Adhikar Forum, Nepal

Tarai-Madhesh Loktantrik Party, TMLP

Sadbhavana Party, SP

Community Part of Nepal (Marxist- Leninist)

Federal Socialist Party of Nepal, FSPN

Rastriya Janamorcha Party

Community Part of Nepal (United)

Rashtriya Madhesh Samajwadi Party

Rastriya Janamukti Party, RJ

Nepal Workers Peasants Party

Terai Madhes Sadbhavana Party

Tharuhat Tarai Party Nepal

Nepal Pariwar Dal

Dalit Janajati Party

Akhanda Nepal Party

Madeshi Janadikar Forum (Gantantrik)

Nepali Janata Dal

Khambuwan Rashtriya Morcha, Nepal

Nepa Rastriya Party

Jana Jagaran Party Nepal

Sanghiya Sadhbhawana Party

Madhes Samata Party Nepal

Samajwadi Janata Party

Sanghiya Laktantrik Rastriya Manuch (Tharuhat)

December 10, 2013

Re: Pledge to end the cycle of impunity in Nepal

Dear Mr Sushila Koirala, Mr Jhala Nath Khanal and Mr. Puspa Kamal Dahal "Prachanda" and other elected members of the Constituent Assembly of Nepal,

On the occasion of the International Human Rights Day, the ICJ calls on the Nepali

Congress, the Community Party of Nepal (UML) and the United Communist Party of Nepal (Maoists) (UCPN (Maoist)) as well as the members of the other political parties elected to the Constituent Assembly, to work together to end impunity for gross violations of human rights a priority.

Seven years since the end of the civil war, impunity for crimes under international law, including gross human rights violation and abuses committed by the Government and Maoist insurgents and serious violations of international humanitarian law, continues to be widespread. No significant efforts have been made to hold persons criminally accountable for such violations, which resulted in over 15,000 killed and over 1,300 subjected to enforced disappearances.

Despite express commitments in the Comprehensive Peace Agreement 2006, there continues to be no credible transitional justice mechanism that accords with international law and standards.

On 14 March 2013, the President promulgated the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance (the Ordinance) on an urgent basis, without the participation or consultation with victims or civil society organizations. The Ordinance introduces the possibility of granting amnesty for acts of torture and ill-treatment, enforced disappearance and crimes against humanity.

The granting of amnesties for serious human rights violations and crimes under international law is incompatible with Nepal's international legal obligations, including under the International Covenant on Civil and Political Rights and the Convention against Torture. This principle is affirmed in the jurisprudence of the supervisory bodies of those treaties as well as in the *UN Principles to Combat Impunity*. As a State party to these treaties, Nepal has an obligation promptly and thoroughly to investigate and hold persons criminally accountable all allegations of extrajudicial killing, torture and ill-treatment and enforced disappearance. Victims of gross human rights violations and serious violations of international humanitarian law are guaranteed the right to an effective remedy and reparations for such violations.

The Ordinance not only contravenes international law, it goes against the 2006 Comprehensive Peace Agreement, the 2007 Interim Constitution and disregards decisions of the Nepal Supreme Court, notably the *Rabendra Dhakal* case where the Court explicitly ordered the Government to establish a commission of inquiry, in compliance with international law, to investigate enforced disappearances.

The ICJ welcomed the commitments of the Nepali Congress Party, the CPN-UML, UCPN-Maoist in their election manifestoes and written statements to establish a transitional mechanism in line with international standards. The ICJ also welcomed the public pledges of the Nepali Congress Party, CPN-UML and UCPN (Maoists) during the election campaign to prevent amnesties. The ICJ now calls on all political parties to respect these commitments and act upon them.

Last month, the ICJ released a 117-page, [*Authority without Accountability: the struggle for justice in Nepal*](#), explaining how a well-established system of privilege and statutory immunity has entrenched a culture of impunity. The ICJ set out a 'Roadmap to Rule of Law' in the form of recommendations that if followed would

begin the process of dismantling this complex web of impunity.

Despite several Court decisions, ordering a criminal investigation, the police continue to refuse to investigate and fail to initiate credible investigations into allegations of extrajudicial killing, torture and ill-treatment, including sexual violence and enforced disappearances. A recent example is the 2004 enforced disappearance and killing of Krishana Prasad Adhikari case, which is pending in Chitawan District Police office. The Government of Nepal is obligated under international law to guarantee the credible, prompt and independent investigation of allegations of human rights violations, ensuring no obstruction or influence political or otherwise is permitted.

The people of Nepal have long demanded truth, justice and reparations for violations of their human rights. Despite repeated promises and public pledges, previous governments have failed to satisfy this demand.

The ICJ calls on the Nepali Congress, UML and UCPN (Maoist) to join together and implement the 'Roadmap to Rule of Law' to ensure those responsible for enforced disappearances, torture and ill-treatment (including sexual violence) and extrajudicial killing are investigated and brought to justice

(1) Ensure the new constitution does not permit any State official to grant an official pardon, withdraw a case or grant an amnesty to anyone suspected or convicted of an offence constituting a gross human rights violation or crime under international law;

(2) Enact legislation to ensure that any parliamentarian or State official against whom there are credible allegations of responsibility for gross violations of human rights, and other crimes under international law, including war crimes and crimes against humanity are suspended from service in public office, including armed forces personnel representing Nepal in international peace-keeping operations, at least pending the outcome of an independent and impartial investigation and fair trial;

(3) Limit the application of Section 5.2.7. of the *Comprehensive Peace Agreement* to ensure that only those cases brought during the course of the conflict and up to – and not after – the signing of the Peace Agreement are eligible for withdrawal, while also ensuring that cases involving credible allegations of gross human rights violations are not withdrawn;

(4) Implement the decisions of the Supreme Court issuing instructions to the Attorney General and all relevant law enforcement personnel to proactively and vigorously pursue all cases alleging gross violations of international human rights law and other crimes under international law;

(5) Review the *Public Security Act, 2046 (1989)*, the *Police Act, 2012 (1955)*, the *Armed Police Act, 2058 (2001)*, and the *Army Act 2006*, in order to remove any immunity afforded to State officials for gross violations of human rights and other crimes under international law.

(6) Amend the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance in line with international standards.

(7) Ensure that no political or any other influence is made in relation to the ongoing investigation on the cases of extrajudicial executions pending in various police stations including the Adhikari murder case in Chitawan District.

Sincerely

Ben Schonveld

South Asia Director,
International
Commisison of Jurists