

UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS  
**53<sup>rd</sup> Session of the UN Committee on Economic, Social and Cultural Rights**  
10 - 28 November 2014

**THE INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION  
TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN  
ADVANCE OF THE EXAMINATION OF NEPAL'S THIRD PERIODIC REPORT  
UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

Submitted on 3 November 2014

*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE THIRD PERIODIC REPORT OF NEPAL**

1. During its 53<sup>rd</sup> session, from 10 November to 28 November 2014, the UN Committee on Economic, Social and Cultural Rights (the Committee) will examine Nepal's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights (the Covenant), including in light of the State Party's third periodic report under articles 16 and 17 of the Covenant.<sup>1</sup> In this context, the International Commission of Jurists (ICJ) welcomes the opportunity to submit the following observations to the Committee.

### **Introduction**

2. In this submission, the ICJ expresses concern about Nepal's failure to comply with certain obligations under the Covenant as a result of the fact that the State Party has undermined the independence and effective functioning of the National Human Rights Commission (NHRC). Further, the organization voices concern at the State Party's failure to provide a) an effective remedy for the forced displacement during the armed conflict, and b) adequate rehabilitation support and compensation for human rights abuses during the armed conflict.

### **General Obligations under article 2.1**

#### *National Human Rights Commission*

3. The ICJ is concerned that the government of Nepal has taken steps that undermine the independence of the NHRC. The organization's concern in this respect is deepened further by the authorities' failure to ensure the full implementation of the majority of the NHRC's decisions and its recommendations for the instigation of criminal proceedings in a large majority of cases. Such failures are described in greater detail below. Indeed, as also noted further below, the Supreme Court of Nepal has declared null and void some of the provisions of the National Human Rights Commission Act, 2068 (2012),<sup>2</sup> which had brought about the above-mentioned detrimental limitations to the independence, mandate and powers of the Commission.<sup>3</sup>
4. In March 2014, the Human Rights Committee expressed its concern over the "introduction of restrictions to the independent and effective functioning of the NHRC through the adoption of the National Human Rights Commission Act in 2012. While noting the Supreme Court decision of 6 March 2013 which declared various provisions of the Act null and void, the Committee regrets the lack of progress in bringing the Act in line with the Paris Principles. It also regrets the inadequate implementation of the recommendations issued by the NHRC, despite the fact that they are binding under domestic law". In light of these concerns, the Human Rights Committee recommended that:

*The State party should amend the National Human Rights Commission Act 2068 (2012) to bring it in line with the Paris Principles (General Assembly resolution 48/134, annex) and the Supreme Court decision of 6 March 2013 so as to ensure its independent and effective functioning. It should also amend procedures governing the appointment of Commissioners to ensure a fair,*

---

<sup>1</sup> Nepal, Implementation of the International Covenant on Economic, Social and Cultural Rights: Third Period Reports submitted under Articles 16 and 17 of the Covenant, UN Doc. E/C.12/NPL/3 (2011).

<sup>2</sup> National Human Rights Commission Act 2012.

<sup>3</sup> National Human Rights Commission 2012, sections 10(5) and 17(10) were declared null and void on 6 March 2013.

*inclusive and transparent selection process, and ensure that the recommendations issued by the NHRC are effectively implemented.*<sup>4</sup>

5. In its List of Issues in relation to the third periodic report of Nepal,<sup>5</sup> the Committee requested information from the Government on the steps it had taken to ensure that the NHRC complies fully with the Paris Principles.<sup>6</sup> The ICJ has noted the reply of the Government of Nepal to this question,<sup>7</sup> and takes issue with its contents in several respects.
6. First, while in the said reply the Government of Nepal claims that the NHRC is “an independent constitutional body” whose independence and autonomy are “guaranteed by the constitution”,<sup>8</sup> the ICJ is concerned that the National Human Rights Commission Act, 2068 (2012), passed on 21 January 2012, has limited the independence, as well as the powers and mandate of the NHRC in a number of significant respects.
7. The preamble to Human Rights Commission Act, 2053 (1997) made the NHRC an independent and autonomous body.<sup>9</sup> The preamble of the Act states that, “it is expedient to establish an independent and autonomous National Human Rights Commission for the effective enforcement as well as protection and promotion of Human Rights conferred by the Constitution and other prevailing laws”.<sup>10</sup> Furthermore, under Section 11 of the 1997 Act, the NHRC was endowed with the same powers of a court, namely:
  - “(a) Requiring any person to appear before the Commission for recording his/her statement and information within his knowledge,
  - (b) Summoning witnesses and examining them,
  - (c) Ordering the production of any document,
  - (d) Requisitioning [*sic*] any document or copy thereof from any governmental or public office or the court,
  - (e) Examining evidence,
  - (f) Carrying one or causing to be done an on-the-spot inspection, ordering the production of any physical evidence.”<sup>11</sup>The failure to include the Section 11 powers of the 1997 NHRC Act in the 2012 Act have stripped the NHRC of its power to act in the same manner as a court of law.<sup>12</sup>
8. Second, in order to guarantee its independence, the NHRC should be endowed with the power and financial resources necessary to be able to recruit its own staff, including its Secretary.<sup>13</sup> In its replies to the List of Issues, the Government of Nepal claims that, consistent with the Paris Principles, “the NHRC enjoys structural, functional and financial independence”. However, while Section 18(1) of the 1997 Act empowered the Commission to appoint its own employees as necessary to discharge its mandate,<sup>14</sup> the 2012 Act does not feature an equivalent provision. Instead it provides for the Government of Nepal to approve the Commission’s

<sup>4</sup> Human Rights Committee, Concluding Observations on the second periodic report of Nepal, UN Doc. CCPR/C/NPL/CO/2 (2014), para. 7.

<sup>5</sup> Committee on Economic Social and Cultural Rights, List of issues in relation to the third periodic report of Nepal, UN Doc. E/C.12/NPL/Q/3, (2013).

<sup>6</sup> *Ibid.*, para. 1; Commission on Human Rights, National Institutions for the Promotion and Protection of Human Rights (The Paris Principles), UN Doc. A/RES/48/134 (1993).

<sup>7</sup> See Committee on Economic, Social and Cultural Rights, List of issues in relation to the third periodic report of Nepal, Addendum, Replies of Nepal to the list of issues, UN Doc. E/C.12/NPL/Q/3/Add.1 (2014), paras. 1-3.

<sup>8</sup> *Ibid.*, para. 1.

<sup>9</sup> Human Rights Commission Act (1997).

<sup>10</sup> *Ibid.*, preamble.

<sup>11</sup> *Ibid.*, section 11.

<sup>12</sup> Human Rights Committee, Concluding Observations on the second periodic report of Nepal, UN Doc. CCPR/C/NPL/CO/2 (2014), para. 7.

<sup>13</sup> Human Rights Commission Act 2012, section 28.

<sup>14</sup> Human Rights Commission Act 1997, section 18(1).

organizational structure and posts.<sup>15</sup> Further, the Government now seconds employees to the Commission, undermining its independence at least in appearance if not in fact. In addition, under the 2012 Act,<sup>16</sup> the NHRC is also required to consult with the Ministry of Finance if it wishes to establish branch offices, something that the 1997 Act did not require. Further, Section 20(1) of the 2012 Act requires approval of the Ministry of Finance before any agreement can be entered into with either national or international organizations.<sup>17</sup> These requirements open the door to undue interference by the Ministry of Finance. Further, while the 1997 Act empowered the Commission to obtain “such means and resources from different agencies by way of grants” as “required for the performance of its functions”,<sup>18</sup> the 2012 legislation does not endow the NHRC with any equivalent power.

9. Third, on 6 March 2013, the Supreme Court declared Sections 10(5) and 17(10) of the NHRC Act 2012 null and void. Section 10(5) of the Act required that any complaint be lodged with the NHRC within six months from the date of the incident that formed the object of the complaint or, if the complainant was in custody, six months from his or her release. Section 17(10) of the 2012 Act empowered the Attorney General not to implement NHRC’s recommendations concerning the initiation of legal action against officials allegedly responsible for human rights violations as long as the Attorney General informed the NHRC in writing of the reasons for the failure to proceed with the instigation of legal proceedings. The Supreme Court ordered the Government of Nepal to amend the legislation by bringing a bill before Parliament. In this context, the ICJ has noted that the Government of Nepal in its replies to the List of Issues claims to be committed “to submitting an amendment bill to the NHRC Act to give effect to the judgment of the Supreme Court.”<sup>19</sup> However as of November 2014, more than a year and a half after the Supreme Court’s ruling, no such action has been taken. The ICJ is concerned that the Government’s failure to take prompt action to implement the Supreme Court’s ruling not only undermines the ability of the NHRC to act, but also defies the independence of the judiciary and the rule of law.
10. Fourth, the ICJ has noted the reference to efforts being made to appoint the Chairperson and Members of the NHRC with transparency and in keeping with the constitution.<sup>20</sup> In this context, however, the ICJ is concerned at the authorities’ failure to take action to ensure the appointment of Commissioners before the expiry of the terms of office of all of the Commissioners on 16 September 2013. As a result of this failure, the NHRC was left without Commissioners for more than a year.<sup>21</sup> In the months leading up to the expiry of their terms of office, the Commissioners called on the Government to find a solution so that the NHRC would not be left without leadership. The Parliament Constitutional Council recently recommended the appointment of a certain person as Chairperson, as well as the appointment of other individuals as members of the NHRC.<sup>22</sup> Such a process would appear to fall short of the transparent appointment process

---

<sup>15</sup> Human Rights Commission Act 2012, section 27.

<sup>16</sup> Human Rights Commission Act 2012, section 32, requires the NHRC to seek approval from the Ministry of Finance if it wishes to make rules that have financial implications for the Government, for instance opening branch offices.

<sup>17</sup> National Human Rights Commission Act 2012, section 20(1).

<sup>18</sup> National Human Rights Commission Act 1997, section 15(1).

<sup>19</sup> Committee on Economic, Social and Cultural Rights, List of issues in relation to the third periodic report of Nepal, Addendum, Replies of Nepal to the list of issues, UN Doc. E/C.12/NPL/Q/3/Add.1 (2014), para. 3.

<sup>20</sup> *Ibid.*, para. 3.

<sup>21</sup> The NHRC Chairman, Kedar Nath Upadhyaya, and Commissioners, Ram Nagina Singh, Gauri Pradhan, Leela Pathak and KB Rokaya completed their six-year tenure on 1 September 2013. Their responsibilities were delegated to the acting Secretary, Bed Prasad Bhattarai. The Chairman and four Commissioners positions were re-appointed in September 2007, consequently the NHRC had been without leadership for 15 months.

<sup>22</sup> Appointments of the Commissioners are made by the President, acting on the recommendation of the Constitutional Council, following confirmation by parliamentary hearing.

recommended by the Committee in 2008.<sup>23</sup> The recommendation has been challenged in the Supreme Court on grounds that the nomination process failed to meet the Paris Principles especially in respect of a lack of transparency and inclusiveness. Despite the challenge pending in the Supreme Court, the appointments were made on 20 October 2014.

11. Under Article 2.1 of the Covenant, the State Party has the general obligation "to take steps... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means". Further, the Committee has clarified in its General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights,<sup>24</sup> that the work of national institutions for the promotion and protection of human rights is one means through which important steps can be taken towards the progressive realization of Covenant rights. Moreover, in its General Comment No. 3 on the nature of States parties' obligations under Article 2.1 of the Covenant,<sup>25</sup> the Committee has noted that, "any deliberately retrogressive measures ...would require the most careful consideration and would need to be fully justified...".<sup>26</sup>
12. Given the above, the ICJ is concerned that the State Party's undermining of the independence and effective functioning of the NHRC, as described in detailed above, is inconsistent with its general obligation under Article 2.1 of the Covenant. In this respect, the Government of Nepal's reply regarding the NHRC in its replies to the List of Issues has done nothing to allay the organization's concern. Further, the ICJ considers that the Government of Nepal has failed to provide any justification for the regressive measures that it has taken with respect to the NHRC.

### **Article 2.1 and 11.1**

#### *Right to an adequate standard of living*

13. On 8 October 2012, the UN High Commissioner for Human Rights released a comprehensive report documenting and analyzing serious violations of human rights and international law during the armed conflict.<sup>27</sup> According to the report, there were approximately 9,000 gross violations of international human rights law or serious violations of international humanitarian law.<sup>28</sup>
14. The Committee, while considering the second periodic report of Nepal, in 2008 had already recommended that the Government "provide adequate and immediate assistance, in particular through special temporary measures to alleviate the adverse impact of the conflict on women, including poverty and loss of income, social stigma, and insecurity of tenure resulting from unclear property rights due to the unknown fate of the missing spouses."<sup>29</sup>
15. The ICJ is concerned that the State Party has yet to take adequate measures to

---

<sup>23</sup> 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. 31.

<sup>24</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 10, The role of national human rights institutions in the protection of economic, social and cultural rights, UN Doc. E/C.12/1998/25 (1998).

<sup>25</sup> Committee on Economic, Social and Cultural Rights, General comment No. 3, The nature of States parties' obligations, UN Doc. E/1991/23 (1990).

<sup>26</sup> *Ibid.*, para. 9.

<sup>27</sup> See Office of the High Commissioner for Human Rights, The Nepal Conflict Report (2012).

<sup>28</sup> *Ibid.*

<sup>29</sup> 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.

address these violations in line with the above-mentioned recommendations of the Committee, especially with regard to violations of the right to adequate housing.<sup>30</sup>

16. The Government of Nepal adopted the Nepal National Polices on Internally Displaced Persons (National Polices on IDP) in 2007, which defines an internally displaced person as "a person who is living somewhere else in the country after having [been] forced to flee or leave their home or place of habitual residence due to armed conflict or situation of violence or gross violations of human rights or natural disasters or human-made disasters ... or with an intention of avoiding the effects of such situations."<sup>31</sup>
17. While the National Policies on IDPs specifically define and include victims of the armed conflict,<sup>32</sup> it fails to adequately address and provide appropriate remedies for its victims. Furthermore, the Government has made only minimal efforts to ensure that those displaced by the armed conflict receive proper protection and assistance to enable them to achieve durable solutions.
18. Most of the approximately 300,000 people<sup>33</sup> displaced during the decade long armed conflict have not yet returned to their homes. In this context, the ICJ notes that, even when taking into account the much smaller figure of 79,571 for the IDPs provided by the Relief and Rehabilitation Division of the Peace and Reconstruction Ministry, the government own record shows that only 25,000 among the IDPs have received the relief packages announced by the Government.<sup>34</sup> Further, as part of those relief packages the Government has provided only a very small amount of money to those who wanted to go back to their homes, but it has made no other effort to grant them adequate compensation or other forms of reparation.
19. Victims of the conflict, including IDPs, are entitled to an effective remedy for the violations of their human rights, including the right to "full and effective reparation... which includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."<sup>35</sup> With regard to wrongfully taken land and other property, international standards guarantee the right of displaced persons to return safely to their homes and to the restitution of property, housing and land unless this restitution is impossible.<sup>36</sup>

---

<sup>30</sup> See Committee on Cultural, Economic and Social Rights, Concluding Observations of the Committee on Economic Social and Cultural Rights: Nepal, UN Doc. E/C.12/NPL/CO/2 (2008), paras. 14 and 16. See also Human Rights Council, Report of the Working Group on the Universal Periodic Review: Nepal, UN Doc. A/HRC/17/5 (2011), paras. 106.13 and 106.55. See, Social and Cultural Rights in Nepal, A Civil Society Parallel Report: Review Period: April 2007-July 2013, (2013).

<sup>31</sup> National Polices of Internally Displaced Persons, 2007, section 3(a).

<sup>32</sup> National Polices of Internally Displaced Persons, 2007, section 3(b), which states a "[p]erson or family displaced by conflict' means a person or family who is displaced internally by compulsion owing to creation of such a situation where it is not possible to live in one's home or place of habitual residence due mainly to armed conflict or situation of violence or the conditions of gross violation of human rights."

<sup>33</sup> Caritas Nepal, Caravan of IDPs (2005) cited in Padma Prasad Khatiwada, Internally Displaced Persons in Nepal: More Issues, Less Heard, Study Report (2012), p. 4. .

<sup>34</sup> Nepalese Ministry of Peace and Reconstruction, Relief and Reconstruction Division, Internal Report (only available in Nepalese). Available at [http://www.rahat.gov.np/uploads/9497\\_File\\_RAHAAT%20DISTRIBUTION%20UPTODATR%202070.pdf](http://www.rahat.gov.np/uploads/9497_File_RAHAAT%20DISTRIBUTION%20UPTODATR%202070.pdf).

<sup>35</sup> General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2005), section IX.

<sup>36</sup> See UN Commission on Human Rights, Report of the Representative of the Secretary-General, Addendum, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998), Principles 21, 28 and 29; Sub-Commission on Human Rights, Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, Final report of the Special Rapporteur, UN Doc. E/CN.4/Sub.2/2005/17 (2005), Annex Principles on Housing and Property Restitution for Refugees and Displaced Persons, section II. See also *inter alia*

20. To discharge its obligations under article 2 of the Covenant, the Government must provide not simply a remedy, but an "effective" remedy.<sup>37</sup> While the National Policies on IDP generally reflect the notion enshrined in the UN International Guiding Principles on Internal Displacement<sup>38</sup>, the Government has failed to ensure that victims of conflict, including IDPs, have received adequate compensation or other forms of reparation.
21. Two separate petitions have been filed by armed conflict victims asking the Supreme Court to issue an Order against the Government of Nepal.<sup>39</sup> Concerning IDP and victims of confiscated property, the Supreme Court in December 2007 and January 2009 ruled that impunity for conflict-era rights violations cannot be tolerated and the Government has a responsibility to ensure a remedy for rights violations including the unlawful seizure of property by non-state actors during the armed conflict. Further, the Court issued a directive order to the Government of Nepal to: "set up a district-level property return committee comprising five members including petitioners, a representative from law enforcement agencies, political personalities, and representatives of victim communities in districts having problems similar to that of the petitioners; through that committee, by adhering to the abovementioned procedures, to assess loss, damage or depreciation, also assess the losses, in the case of occupied properties that are income generating in nature, from the date of occupation to present; to return, cause to return, the properties to rightful owners as per the claim of the petitioners through the said committee within three months from the date of receipt of this order; and to set up a fund to provide relief to those who became victims from the damage owing to the occupation of properties."<sup>40</sup>
22. However, the Government has failed to take any measurable steps to implement the Supreme Court's decision. Further, the Maoist Party is publicly refusing to return confiscated property, on grounds that it was captured by the "people".<sup>41</sup>
23. In addition to the loss of homes and property from displacement, many wives of those who were victims of enforced disappearances<sup>42</sup> during the conflict are currently facing hurdles in transferring their husband's property because without

---

Committee of Economic, Social and Cultural Rights, General Comment No. 4 (1991), para. 8(a); Committee on the Elimination of Racial Discrimination, General Recommendation 22, Refugees and Displaced Persons, UN Doc. A/51/18, Annex VIII (1996), para. 2.1, "All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them."; Human Rights Commission Resolution 2003/34 on the Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights, UN Doc. E/CN.4/RES/2003/34 (2003), Preamble, "Reaffirming that, pursuant to internationally proclaimed human rights principles, victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation".

<sup>37</sup> Committee of Economic, Social and Cultural Rights, General Comment No. 9, UN Doc. E/C.12/1998/24 (1998), paras. 2 and 3.

<sup>38</sup> UN Commission on Human Rights, the Report of the Representative of the Secretary-General, Addendum, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998).

<sup>39</sup> For details, *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)*

<sup>40</sup> *Liladhar Bhandari & Ors. v. Government of Nepal & Ors. (Case No. 0863/2064)*.

<sup>41</sup> Kamal Raj Sigdel, "Maoist row over returning property", *Kathmandu Post*, 7 November 2011.

<sup>42</sup> The Working Group on Enforced and Involuntary Disappearances reported that during the ten-year conflict in Nepal, the highest number of enforced disappearances reported was in 2002, when 277 cases were notified in, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc A/HRC/13/31 (2009). The Working Group on Enforced and Involuntary Disappearances has transmitted a total of 672 cases to the Government of Nepal and, as of 2 March 2012, it had received no further information on 458 of these cases." See Working Group on Enforced and Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary, UN Doc. A/HRC/19/58/Rev.1 (2012) as cited by Office of the High Commissioner for Human Rights, *The Nepal Conflict Report*, (2012), p. 112.

proof of their husband's death and in the absence of proof of continuous missing status of their husband the property cannot be officially transferred.<sup>43</sup>

24. Under Nepali inheritance law on the death of a husband/father, a surviving widow and any children have a right to all of the deceased's property, including land.<sup>44</sup> By Law, property can also be partitioned among a husband, wife and children during the lifetime of the husband/father, although in practice this not as common. In the case of the wives of those who were victims of enforced disappearances, without proof of their husband's death and in the continued absence of the husband, land and other property cannot be officially transferred. The exception to this is the so-called 12-year rule, whereby someone who has been continuously missing for 12 years can be presumed dead.<sup>45</sup> However, this provision is problematic in relation to enforced disappearances, as a presumption of death is unacceptable to many wives until the fate of their husband is determined.
25. Despite commitments made in the Comprehensive Peace Agreement (CPA), the Interim Constitution and by leaders of political parties, the whereabouts of those disappeared have still not been disclosed therefore preventing the wives from obtaining the transfer of their husbands' properties.
26. The Government must take all "appropriate means" for the realization of the right to an adequate standard of living under the Covenant, including administrative and judicial remedies, to comply with its obligations under articles 2 and 11.<sup>46</sup> The National Policy on IDPs directly conflicts with the rights guaranteed in the Covenant. In the light of this, the ICJ considers that the Governments' failure to modify its National Policy on IDPs is inconsistent with the State's obligations under the Covenant.

## **RECOMMENDATIONS**

27. In light of the above-mentioned concerns, the ICJ considers that the Government of Nepal should implement the following recommendations in order to comply with its obligation under the Covenant:

### Article 2.1 - National Human Rights Commission

- i. Amend the National Human Rights Commission Act 2012 in a manner that is consistent with the Supreme Court's judgment and international human rights standards safeguarding its independence, and enlarge its mandate so as to ensure that it can function in a manner that is consistent with the government's obligations to ensure the right to an effective remedy, in accordance with article 2(1) of the Covenant and with the Paris Principles.
- ii. Ensure a transparent appointment process of the Chairperson, Secretary and other members of the Commission to enable the NHRC to function effectively and independently in accordance with the Paris

---

<sup>43</sup> "Enforced disappearances" were among the serious human rights violations committed during the armed conflict in Nepal. Reported as early as 1997, conflict-related disappearances escalated significantly following the declaration of a state of emergency and the mobilization of the Royal Nepalese Army in November 2001. See Office of the High Commissioner for Human Rights, *The Nepal Conflict Report* (2012).

<sup>44</sup> See *Muluki Ain (General Code)*, Chapter 16 on Inheritance, section 2.

<sup>45</sup> Evidence Act (1974), section 32, "Burden of proving that a person is alive: Provided that, when the question is whether a person is alive or dead, it is proved that such person has not been heard of for a period of twelve years by those who would naturally have heard of him/her if he/she had been alive, the burden of proving that he/she is alive is shifted to the person who affirms it."

<sup>46</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 9, UN Doc. E/C.12/1998/24 (1998), paras. 1, 2 and 3.



Principles.

Articles 2 and 11- Right to an adequate standard of living

- i. Take immediate action to implement 2007 and 2009 Supreme Court ruling in relation to IDPs' rights.
- ii. Take immediate measures to ensure to those that were forcibly displaced as a result of the armed conflict the right to an effective remedy as guaranteed by article 2, which includes the right to "full and effective reparation," including but not limited to measures that allow the IDPs to choose residence, return the confiscated properties, provide loan facilities and introduce a rehabilitation program in line with international standards, and in particular with the International Guiding Principles on Internal Displacement and the Principles on Housing and Property Restitution for Refugees and Displaced Persons.<sup>47</sup>
- iii. Take administrative, legal and all other measures necessary to ensure that the wives of those who were disappeared during the armed conflict are able to obtain transfer of their husbands' property without prior certification of their death.
- iv. Take all necessary measures to clarify the whereabouts and fate of disappeared persons and guarantee the right to the truth of their families and of society at large.

---

<sup>47</sup> UN Commission on Human Rights, Report of the Representative of the Secretary-General, Addendum, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998); Sub-Commission on Human Rights, Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, Final report of the Special Rapporteur, UN Doc. E/CN.4/Sub.2/2005/17 (2005), Annex Principles on Housing and Property Restitution for Refugees and Displaced Persons.