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NEFAD NEPAL JOINT SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF NEPAL¹

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1. Summary

1. Transitional justice efforts in Nepal continue to be elite-led and top-down, far removed from the daily realities, priorities and needs of victims and their families. The political maneuvering and lack of transparency of the two transitional justice commissions have alienated victims and resulted in a lack of trust and credibility in their eyes. The stalemate between international and domestic human rights organizations and the Nepali government over issues of criminal prosecutions and amnesty has impeded progress on other areas of transitional and transformative justice. Whereas international organizations have focused on legal and prosecutorial justice in Nepal, the primary goal of victims and survivors is to learn the truth about what happened to them and their relatives, and to secure social and economic justice, recognition and memorialization.

2. Introduction

2. Nepal's civil war from 1996-2006 between the then Royal Nepal Army led joint security forces and Maoist rebels saw widespread human rights violations committed by both sides, including torture, enforced disappearances, extrajudicial arrests and killings, and rape. The war left approximately 17,000 dead, over 80,000 internally displaced, and between 1,300 and 2,000 forcibly disappeared.² The 2006 Comprehensive Peace Accord (CPA), which ended the civil war, outlined the process for the establishment of a truth and reconciliation commission and an official commission to investigate enforced disappearances. Despite these provisions in the 2006 CPA, however, political gridlock and the drafting of a new federal constitution meant that the Transitional Justice Act (TJA) formally establishing these two transitional justice commissions was not passed until 2014. Due to significant flaws—most notably the inclusion of substantial amnesty clauses for perpetrators of serious human rights violations—the TJA received widespread criticism from the international human rights community and domestic victims' groups. On February 26, 2015, the Supreme Court of Nepal struck down the TJA on the

¹ This report was drafted by Ram Kumar Bhandari, the founder and president of Network of Families of the Disappeared (NEFAD), Nepal on behalf of NEFAD, Committee for Social Justice and Foundation of Memory of Martyrs and the Disappeared with support from Elizabeth Alexion, a Peace Fellow at the Advocacy Project (AP).

² Thapa, Lily, and Deon V. Canyon, "The Advancement of Women in Post-Conflict Nepal," Daniel K Inouye Asia-Pacific Center for Security Studies (2017), 1.

grounds that it was unconstitutional.

3. Since Nepal's last Universal Periodic Review (2nd Cycle) in 2015, no changes have been made to the TJA, and all efforts to address past human rights abuses have excluded victims and neglected their needs. This report focuses on the multi-dimensional needs of relatives of the disappeared in Nepal and examines the ways in which elite political interests have repeatedly coopted efforts to pursue justice. The gendered experience of wives of the disappeared is given particular attention, and the report concludes with recommendations for the Government of Nepal during its 3rd Universal Periodic Review in 2021.

4. The Network of Families of the Disappeared (NEFAD) is a family-based network representing victims and survivors of enforced disappearance from across Nepal, including victims of both State and rebel actions during the internal armed conflict (1996-2006). NEFAD seeks to empower victims, survivors and their associations, and amplify their concerns at national and international level. NEFAD provides national representation to its members and grassroots associations, ensuring that their needs and voices are heard at the highest level of transitional justice processes. NEFAD was founded in 2009 led by families to support and advocate for victims and survivors, giving grassroots families a national voice to organize their movement for truth, justice, reparation, memory and dignity. NEFAD closely coordinates with Committee for Social Justice, and Foundation of Memory of Martyrs and the Disappeared, whereas NEFAD represents the Coalition of disappeared victims and survivors Associations, along with these organizations in this joint submission.

3. Priorities, needs and challenges for families of the disappeared in Nepal

5. In 2009, the International Committee for the Red Cross (ICRC) conducted a study to identify the needs of families of the disappeared in Nepal. Knowing the truth about the fate of their relatives has always been and remains the top priority for most of these families.³ The truth they seek is a specific and detailed account of what happened to their relative and their ultimate whereabouts, rather than a generalized truth about the widespread abuses that occurred throughout the civil war. In this way, the truth they pursue is deeply personal. Until they have absolute proof of the death of their relative, the families continue to live in a state of ambiguous loss in which uncertainty and remnants of hope prevent the completion of the grieving process. Over 80% of respondents said that the only acceptable proof of death would be the physical remains of their relatives—until they have a body there can be no closure or performance of acceptable death rituals. In this way, many relatives perceive answers and the return of remains to be a reparative act and a form of justice in itself.

6. The second need identified by families of the disappeared is economic support. Over 90% of the victims of enforced disappearances were working-age males who were often a primary

³ ICRC, "Families of Missing Persons in Nepal: A study of their needs," April 2009, 12-16.
<https://www.icrc.org/en/doc/assets/files/2011/families-of-missing-persons-nepal-report.pdf>

breadwinner for their families. In the absence of this income, the economic security of many families deteriorated, especially when the disappeared family member was the main financial earner in the household. Additionally, since there is no legal status for the disappeared and many relatives are reluctant to declare them dead, many wives of the disappeared do not have the same legal entitlements to land or other assets that they would have if their husbands were dead. A 2013 study conducted by the International Center for Transitional Justice (ICTJ) found that 86% of wives of the disappeared who were interviewed did not have access to land titles they would have if their husbands had died.⁴ This further decreased the economic security of many of these women. As a result, many relatives of the disappeared have said that economic support is a priority need. They do not see this in the form of one-time compensation payments, but rather envision it as a long-term, sustainable solution that would allow them to adjust to the realities of their lives and ensure a better future for their children. The solution could take the form of providing stable jobs for relatives of the disappeared, providing pensions, guaranteeing access to medical services and education for their children, and amending laws to allow land titles and assets to be transferred to wives and relatives of the disappeared.

7. Although not as high a priority as truth and economic support, many relatives also consider accountability and prosecutions of those responsible for disappearances to be an important component of justice for families. Several said that accountability is necessary to ensure that these crimes will not be repeated in the future, and many believed that guilty verdicts of perpetrators would have a personal healing effect in the form of recognition of suffering. Almost 70% of those who responded to the 2009 ICRC survey rejected amnesties for perpetrators.⁵ More than half of those who could envisage amnesty said that it would have to be granted conditionally, for example to lower ranks who were following orders or in exchange for the truth about what happened. When asked what justice meant to them, a majority of respondents said prosecution, although others also mentioned compensation, truth and acknowledgement.⁶

8. Another priority for families of the disappeared is public acknowledgement and recognition. Many respondents in the ICRC study said that the government could do more to recognize the sacrifice of those who disappeared in bringing about positive change for the country.⁷ Additionally, while local memorialization efforts have taken place across the country—including local ceremonies and renaming parks and roads after the disappeared—greater efforts could be taken to establish national memorials which would help formalize recognition of the disappeared. Relatives also mentioned compensation as a form of official acknowledgement, although several were wary of accepting compensation if it came in the absence of the truth

⁴ John Tyynela, Lucia Withers, and Prabina Bajracharya, “Beyond Relief: Addressing the Rights and Needs of Nepal’s Wives of the Disappeared,” ICTJ Briefing, August 2013.

⁵ ICRC, “Families of Missing Persons in Nepal: A study of their needs,” April 2009, 27.

⁶ Ibid, 26.

⁷ Ibid, 31.

and accountability.⁸

9. Finally, although Nepal passed the National Criminal Procedure (Code) Act in 2017 criminalizing enforced disappearances, the Act does not apply retrospectively, meaning there is still no legal status for those who disappeared during the civil war. Nor does the 2017 Act comply with international law. Enacting legislation that legally recognizes the status of those who disappeared during the civil war would thus also serve as a form of acknowledgement of the specific crime of enforced disappearance.

10. Families of the disappeared reported that they faced social stigmatization, discrimination and isolation. Because many families did not accept that their relatives were dead, they did not conduct death rituals and were often criticized by their communities as a result. This challenge is particularly acute for wives of the disappeared, many of whom were shunned when they refused to perform rituals of widowhood, such as the removal of bangles and necklaces, washing away of the red *tika* and *sindhur* from their foreheads in the Hindu tradition, and exchanging the red sari of marriage for the white of widowhood.⁹

11. Wives of the disappeared do not fit into the status of either widows nor wives—sometimes they are referred to as “half-widows”—and this has also resulted in severe social stigmatization. This is often compounded by the attitude of in-laws. In the 2013 ICTJ study, many wives of the disappeared reported that their in-laws had expelled them from their households, accused them of having “bad karma” that led to the disappearance of their husband, or compelled them to marry a brother or relative of their disappeared husband in some indigenous communities.¹⁰

12. Wives of the disappeared also reported experiencing discrimination by local officials when they tried to receive interim relief if they were wearing clothes culturally associated with marriage. Such social stigmatization also intersected with other forms of discrimination based on gender, caste, ethnicity, religion and geography. Taken together, these experiences have had significant psychosocial consequences for many of these women, and very few have received sufficient psychosocial support that could help them address the ambiguity of not knowing the fate of their loved ones.

4. Shortcomings of justice for relatives of the disappeared

4.1 Challenges facing the transitional justice commissions

13. The 2006 Comprehensive Peace Accord (CPA) outlined investigative commissions to uncover the truth about events and human rights violations that occurred during the civil war.

⁸ Ibid, 28.

⁹ ICRC, “Families of Missing Persons in Nepal,” 21; Tyynela et al., “Beyond Relief,” 9.

¹⁰ Tyynela et al., “Beyond Relief,” 9.

In 2014, the Transitional Justice Act (TJA) established two such bodies: the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP). The final version of the TJA that was passed—which differed substantially from an earlier version that had been shared with victims’ and human rights groups—contained provisions for possible amnesties for perpetrators of human rights violations including torture, disappearances, and rape.

14. In 2014 and 2015, the Supreme Court of Nepal ruled that the amnesty provisions in the TJA were unconstitutional. Despite the Supreme Court decision, the Government of Nepal did not amend the TJA. In April 2020, the Supreme Court rejected a petition by the government to reverse its 2015 verdict and reiterated its previous ruling that the TJA be amended.¹¹ The government has not amended any part of the TJA.

15. The TRC received more than 60,000 complaints and the CIEDP over 3,000 as of the end of 2018; however, little progress has been made on investigating these cases, and both commissions have been granted several extensions.¹² For much of 2019, the commissions were inactive after the terms of the commissioners came to an end and were not replaced. The names of new commissioners were only proposed in early 2020. To date, the commissions have not recommended any cases for prosecutions. No victims have received information regarding the whereabouts of their relatives, and no recommendations for reparations or legal reforms have been made. Much of this slow progress is the result of a lack of resources and funding, a lack of expertise, the absence of legal restraints, a lack of political will, and in some cases, active political obstruction of progress.

16. Many victims and advocates perceive the commissions as being perpetrator-led and part of a politically motivated process that protects those in power and neglects the interests and needs of victims. A lack of transparency and the exclusion of civil society and victims’ groups from the selection of commissioners has also led many to distrust and reject the TRC and CIEDP. The government held national consultations in January 2020 prior to the selection of new commissioners. However, the consultations only lasted for a few hours and occurred exclusively at the provincial level—rather than at the district or village level, where many victims and their families live. This resulted in widespread criticism that the process was cursory and did not adequately hear or incorporate victims’ perspectives and needs.

17. Another issue plaguing both commissions is that there are no victim and witness protection or other safeguarding mechanisms in place. Since many perpetrators remain in high level positions in the national government, army and police, many victims are reluctant to speak

¹¹ Human Rights Watch, “Nepal: Supreme Court’s Decision Reaffirms the Need to Amend Transitional Justice Law,” May 1, 2020. <https://www.hrw.org/news/2020/05/01/nepal-supreme-courts-decision-reaffirms-need-amend-transitional-justice-law>

¹² Human Rights Watch, “Nepal: Transitional Justice Proving Elusive,” February 13, 2018. <https://www.hrw.org/news/2018/02/13/nepal-transitional-justice-proving-elusive>

about serious human rights violations they experienced out of a strong fear of retribution. Several victims who registered complaints have reported receiving threats from the police and army. There have also been reports that police and army officials have requested that complaints submitted to the TRC and CIEDP be shared with them—presumably in order to allow them to evade investigation or hide evidence.¹³

18. Continuous and ongoing instances of politicization and political interference in the commissions have further deteriorated their legitimacy and credibility in the eyes of victims. A 2016 agreement between the leaders of the two largest political parties to preserve the coalition government contained provisions to withdraw investigations and prosecutions for war-time offences and grant amnesty to perpetrators.¹⁴

19. When the government announced the creation of a recommendation committee in 2014, all of the 5 committee members were affiliated with major political parties.¹⁵ According to the TJA, four of the five recommendation committee members are direct government appointees. Additionally, even though there are three seats open for civil society representatives on the recommendation committee, all of these are selected by the government.

20. Despite provisions in the TJA, the recommendation process was not widely publicized or transparent, did not adequately consult victims and their families, and only accepted applications for commissioners for a very brief time window. Many qualified human rights lawyers, transitional justice experts, and civil society activists boycotted the process and did not apply to be commissioners because of these problems around transparency, politicization and legitimacy, as well as the fact that no changes had been made to the TJA following the Supreme Court's 2015 ruling.

21. The subsequent 2015-2016 selection process for commissioners was also rushed, not widely publicized or transparent, and many of the ultimate appointees were perceived to be hand-picked by political elites. The TJA does not allow for commissioners to be active members of political parties at the time of appointment; however, it was easy for applicants to reassign party affiliation when they applied.¹⁶ The five commissioners who were ultimately selected for each commission thus did not have the technical expertise to effectively carry out the commissions' mandates, leading victims to further reject the process.

22. Another challenge facing the commissions is insufficient funding and lack of autonomy over funds. Each commission's finances, logistics and operations are all controlled by that

¹³ Ram Kumar Bhandari, "Too scared to complain," *Katmandu Post*, May 10, 2016.

<https://kathmandupost.com/opinion/2016/05/10/too-scared-to-complain>

¹⁴ Jeremy Sarkin & Ram Kumar Bhandari, "Why Political Appointments to Truth Commissions Cause Difficulties for these Institutions: Using the Crisis in the Transitional Justice Process in Nepal to Understand How Matters of Legitimacy and Credibility Undermine Such Commissions," *Journal of Human Rights Practice* 20 (2020), 14.

¹⁵ *Ibid*, 17.

¹⁶ *Ibid*, 19.

commission's secretariat, a position which is also filled through government appointment. Similar to the recommendation committee for commissioners, the secretariat position has often been filled by political appointees, exerting additional government interference in the transitional justice process. Many of these appointees lack the expertise and skill to effectively carry out their functions, and the CIEDP has had five secretaries over the course of three years. There have also been challenges in retaining qualified staff for the commissions, further undermining their effectiveness and credibility.

23. Many relatives of the disappeared who submitted complaints to the commissions and other bodies—including the National Human Rights Commission, the UN Working Group on Enforced and Involuntary Disappearances, the UN Human Rights Committee and the Nepal Supreme Court—have never received any information, implementation or follow-up, further reducing their faith in the transitional justice process. The commissions have initiated an investigation of very few cases, and many families have given up hope that these commissions will ever be able to achieve justice for their disappeared relatives.

4.2 Reparations and economic empowerment

24. In 2007, the Government of Nepal established the Interim Relief and Rehabilitation Program (IRP) for conflict-affected persons. Various forms of assistance included economic compensation, academic scholarships and immediate medical care, and were offered to different categories of victims including next-of-kin of deceased or disappeared and survivors of abduction, disability or injury. (IRP beneficiaries notably did not include survivors of sexual violence and included only limited provisions for survivors of torture.)

25. According to the 2013 ICTJ study, 98% of the 1,517 potential beneficiaries identified under the category of “disappeared persons” received benefits from the IRP.¹⁷ Despite these impressive figures, many reported significant difficulties with the IRP process, and these challenges were especially acute for wives of the disappeared. The initial IRP policy granted monetary benefits that were four-times greater for a relative of someone who died than for a relative of someone who was disappeared. This created a perverse incentive for some wives—most notably those who were least economically secure—to declare their husbands deceased rather than disappeared, even though they had never received any information on the ultimate whereabouts of their husbands.¹⁸ Although a cabinet decision in 2009 changed the IRP policy so that wives of the disappeared could receive the same amount as wives of the deceased, by that time as many as 400 wives of the disappeared had declared their husbands dead. An additional lump-sum amount that was offered to wives of the deceased was not available to wives of the disappeared until 2011.¹⁹

¹⁷ Tynnela et al., “Beyond Relief,” 12.

¹⁸ Ibid, 12-13.

¹⁹ Ibid, 13.

26. In addition to discrepancies in the IRP policy, wives of the disappeared also reported significant challenges related to the implementation of the relief program. 76% of respondents had experienced difficulties providing the required evidence of a disappearance. The cost of transportation to apply for and receive relief was another commonly cited challenge (64%), as were the lack of cooperation from public officials (45%) and dysfunction of local committees (22%). Many family members were unable to obtain a recommendation from a political party, which although not a formal requirement, was reported to significantly speed up and increase the chances for a successful application.

27. Wives of the disappeared also reported facing discrimination based on gender, as well as caste and ethnicity, for example by continuing to wear the traditional clothes and symbols of marriage. In some traditional cultures, women had to rely on male relatives to accompany them to receive their benefits, especially when she had to travel long distances to apply for benefits, which further contributed to obstacles to exercising their autonomy. Additionally, some women who received support from international and local NGOs reported that they were subject to sexual exploitation by those who had initially offered to help them.²⁰ Although never designed to be a long-term solution, the IRP has also been criticized for not providing meaningful or sufficient reparation for serious harm suffered during the conflict, including long-term psychosocial needs of victims and their relatives. Finally, many wives and relatives of the disappeared rejected the IRP process altogether, as they saw it as an attempt for the government to sidestep other obligations to victims, including truth, justice and acknowledgement.

28. The IRP ended in 2014. While future reparations programs are still possible based on recommendations from the TRC and CIEDP, initiatives to address the long-term needs of relatives of the disappeared should not be dependent upon the commissions. Two particular programs that could be introduced include expanded psychological support and skills-trainings for relatives of the disappeared, and wives in particular. The implementation of the federalized government structure Nepal also offers greater potential for localized reparations processes, and the centralized government could support more locally led approaches.

4.3 National Legal Codes and International Human Rights Treaties

29. The Government of Nepal passed the National Criminal Procedure (Code) Act on 16 October 2017. Despite criminalizing torture and enforced disappearance, the Act, which went into effect in September 2018, remains significantly flawed. First, its prospective nature means that it does not address violations that occurred during Nepal's internal conflict. Second, the definitions of enforced disappearance and torture contained in the Act are inconsistent with international standards, and the act fails to criminalize enforced disappearance as a crime against humanity. Third, the Act does not recognize that enforced disappearances are a continuous and ongoing

²⁰ Ibid, 13.

crime—rather than a discrete event—for such time as the whereabouts and truth about the disappeared remain unknown. Fourth, the penalties for enforced disappearance and torture outlined by the Act do not correspond to the nature and gravity of these crimes. Fifth, the statute of limitation period to prosecute torture and enforced disappearances is extremely restrictive (six months) meaning that many future crimes will never be prosecuted. The government of Nepal needs to address these serious flaws to the legislation in order for penal provisions to be applicable retroactively and for past and future perpetrators of these crimes to be held accountable under the law.

30. In addition to lacking a criminal code that is in line with international legal standards, Nepal has neglected to ratify crucial international treaties pertaining to enforced disappearances. Most notably, Nepal is not party to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), despite a 2007 verdict from the Supreme Court of Nepal that directed the government to ratify the convention.²¹ Additionally, several Member States repeatedly urged the Government of Nepal to ratify the ICPED during the 2011 and 2015 UPR Sessions. Nepal is also not party to the Rome Statute, despite initial steps taken to ratify it and sustained pressure from domestic and international organizations.

4.4 Working Group on Enforced or Involuntary Disappearances

31. The UN Working Group on Enforced or Involuntary Disappearances (WGEID) visited Nepal on two occasions, first in 2004 and again in 2011. Although both visits were before the TJA was passed, the 2011 WGEID report expressed concerns over the amnesty provisions that were included in the draft bill on the commission of inquiry on enforced disappearances. The Working Group noted that Nepal's Criminal Code was not in line with international standards, which remains true today despite the passing of an updated Criminal Code in 2017, particularly with regard to enforced disappearances. The WGEID also recommended that enforced disappearances be dealt with through civilian rather than military courts, another recommendation which has gone unheeded by the government of Nepal.

32. Additionally, the Working Group was troubled that no prosecutions had been brought against members of the army or police accused of enforced disappearances, that many alleged perpetrators remained in high-level positions in the government, army, and police, and that the government had not conducted adequate vetting of the Nepalese security forces engaged in peacekeeping operations, all of which remain true today as well. The Working Group also expressed concern over the lack of an effective registration of detainees as well as the possible threat to human rights defenders who investigate cases of enforced disappearances.

²¹ The Supreme Court of Nepal on 1 June, 2007 verdict on habeas corpus writs filed against enforced disappearance in 1999 (*Rabindra Prasad Dhakal v. Nepal Government, Council of Ministers, et. al.*, Writ No.3575, registered on 21 January 1999).

33. Finally, the WGEID reminded the government of Nepal of the recommendation given during its first Universal Periodic Review in 2011 to ratify the International Convention for the Protection of All Persons Against Enforced Disappearance; as of July 2020, Nepal has still not ratified this treaty. The working group has requested a follow-up visit, but Nepal has not extended an invitation.

34. On 16 March 2020, five UN Special Procedures—including the WGEID and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of nonrecurrence—sent a joint letter to the Government of Nepal. The communication expressed concern over several issues, including the deficiencies of the victim consultations processes; the lack of independence and transparency in the appointment of new commissioners to the TRC and CIEDP; and potential rushed attempts to pass a poorly consulted amendment to the TJA ahead of Nepal’s third UPR.²² As of writing, the government of Nepal had not responded to the requests from the Special Procedures for further information on these issues.

4.5 International Human Rights Community

35. While well-intended, the international human rights community has pursued a transitional justice agenda that focuses almost exclusively on prosecutions and amnesty while ignoring the multi-faceted needs of the families of the disappeared. Despite numerous studies that have identified a wide range of needs of families of the disappeared—often conducted by these international non-governmental organizations themselves—the international boycott and refusal to engage with the government of Nepal on account of amnesty provisions ultimately perpetuates a top-down and outside-in approach to transitional justice that ignores the realities and priorities of families, including their social, political and economic needs.

36. NEFAD calls on international NGOs and regional and international human rights organizations to re-evaluate their policies and engagement in order to ensure that they are genuinely supporting victim-centered transitional and transformative justice mechanisms that go beyond mere prosecutions for perpetrators. Such an approach would prioritize structural inequalities; demand reparations for conflict-affected persons that based on needs and rights; sustain pressure on the government to formally acknowledge the serious human rights abuses committed during the civil war; facilitate families’ access to the truth about their disappeared relatives; and provide direct support to grassroots family associations to advance locally-led processes. It would also seek to engage with victims’ organizations and, where it is considered appropriate, with the flawed commissions.

4.6 Memorialization

37. Memorialization is an area of restorative justice where the minimal contribution of the government has actually served to the benefit of relatives of the disappeared. Efforts to

²² Joint Communications from Special Procedures on 16 March 2020.

remember and honor the disappeared in Nepal have largely been local and community-driven efforts, often initiated and carried out by victims' groups and relatives of the disappeared themselves. In the aftermath of enforced disappearance, memorialization processes can help relatives of the disappeared perform mourning rituals in spite of the ambiguity of their loss, which supports the healing process for many. This is especially true when the wider community participates in memorialization processes and recognizes the crimes committed against the disappeared. In the face of obstruction of justice by the state, local and community-driven memorialization efforts have allowed relatives of the disappeared to exercise agency and to protest the erasure of the disappeared from national discourses. In an ethnographic study of local memorialization efforts in Nepal, Simon Robins observed that memorialization allowed families to actively resist attempts by the government to render the disappeared invisible or unrecognized.²³

38. Local memorialization efforts in Nepal have included erecting memorials and symbols honoring the disappeared, community prayer ceremonies that often are derived from local traditions and practices, and the naming of parks and roads after the disappeared. Additionally, theater groups have acted performances in remembrance of the disappeared, and some family groups have led initiatives to observe local commemoration days. NEFAD and the Advocacy Project partnered with a cooperative of relatives of the disappeared in the Bardiya district—which suffered more disappearances than any other district in Nepal—to create memorial quilts depicting the memories of the disappeared.²⁴ In addition to serving the aims of memorialization, these quilts have also served as important advocacy tools both domestically and internationally, and in September 2019 the Advocacy Project presented one of these quilts before the WGEID. Because memorialization in Nepal has been largely a bottom-up initiative to restorative justice for relatives of the disappeared, advocates for the victims in other countries where disappearances are widespread can learn from the efforts and practices of families and groups in Nepal.

39. As the intrusion of the state into memorialization efforts could easily result in the cooptation and politicization of memory, the national government of Nepal should proceed cautiously with regards to memorialization of the disappeared. There are, however, crucial steps the government could take to support and make room for victim- and family-led memorialization processes. For example, provincial and district administrations could support and attend local memorialization ceremonies and institute official commemoration days. The government could also issue a formal recognition of the fact of widespread disappearances during the internal conflict, which would help further memorialization and recognition, and also serve as a commitment to non-repetition. Additionally, the government could take steps to involve victims' and advocacy groups in revising the national school curriculum to appropriately educate Nepali youth on past abuses to ensure that these crimes and the disappearances are

²³ Simon Robins, "Constructing Meaning from Disappearance: Local memorialisation of the Missing in Nepal," Submission to ISA 2012 San Diego, 1 April 2012, 13.

²⁴ Advocacy Project, "The Bardiya Memorial Quilts," <https://www.advocacynet.org/nefad-quilt/>.

not removed from the country's history.

5. Recommendations for the Government of Nepal

40. NEFAD calls on Member States participating in Nepal's 3rd Universal Periodic Review to encourage the Government of Nepal to implement the following recommendations to advance justice for the families of victims of enforced disappearances. While amending the amnesty provisions is important, it must not preclude advancement on other areas of restorative justice for victims and their families, including economic and social justice, formal acknowledgement, and national memorialization. Thus, even if the government is not willing to undertake all of these reforms, the international community can encourage them to adopt others. Additionally, the successful federalization of Nepal's government presents new opportunities for enhanced local involvement, integration and ownership of victims and their families in local sociopolitical processes.

TRC and CIEDP

41. *Recommendation 1: Amend the TJA to be in line with the 2015 ruling of Nepal's Supreme Court and international human rights standards.* This includes removing provisions that allow for amnesties for perpetrators of serious human rights violations.

42. *Recommendation 2: Review the appointment process of the TJA so as to allow victims and their advocates to participate in all stages of the commissions' proceedings.* The review process should be undertaken by an independent body that is not appointed or influenced by the government. Nepal has a robust civil society, and genuine reforms would allow the commissions to regain the trust and cooperation of victims. Such reforms include restructuring the composition of the commissions and mandating that an independent body, rather than the government, select members of civil society to be on the recommendation committees. If done correctly, this would ensure wider acceptability and credibility of the commissions.

43. *Recommendation 3: Allocate sufficient resources and budgets to the commissions and allow the commissioners independent control over their budgets; the government should also allow the commissioners to access necessary documentation if they need it to uncover the truth about past events.*

44. *Recommendation 4: Establish victim and witness protection and safeguarding mechanisms.* This includes keeping complaints confidential and not allowing people outside the commission access to them except for legal proceedings. Precautions should also be taken to prevent tampering or destruction of evidence.

45. *Recommendation 5: Establish linkages between the commissions and provincial and local levels of government, especially in areas most affected by the conflict.* This would enable the

commissions to utilize the existing federalism structure and ensure greater victim input and centering of victims' needs and priorities. Additionally, this will improve the access by victims to information about the commissions and may help to reestablish the legitimacy of the commissions in the eyes of the victims and their families.

National Legislation and International Treaties

46. *Recommendation 6: Enact legislation that formally recognizes the status of enforced disappeared persons during the conflict.* This should also extend to allow the legal transfer of assets and land titles for relatives of the disappeared. Such legislation would also serve as public acknowledgement of harm suffered, and could additionally reduce social stigmatization and exclusion of family members and communities.

47. *Recommendation 7: Amend the 2017 National Criminal (Code) Act so that it complies with international standards.* Amendments include: the retroactive application of the Act to past crimes of torture and enforced disappearances; lengthening the statute of limitations period to prosecute these crimes; and revising the sentences for convicted perpetrators of enforced disappearance and torture.

48. *Recommendation 8: Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).*

49. *Recommendation 9: Implement the "Views" of the UN Human Rights Committee related to enforced disappearances.*

UN Human Rights Council

50. *Recommendation 10: Extend invitations to the thematic Special Procedures of the UNHRC, including the Working Group on Enforced or Involuntary Disappearances (WGEID); the Special Rapporteur on Torture; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.* Additionally, the government should respond to the requests outlined in the March 2020 correspondence by the five Special Procedures.

Memorialization

51. *Recommendation 11: Support local memorialization efforts and formally acknowledge past human rights abuses committed during the civil war.* Memorialization policies must prioritize victim and survivor participation and amplify the efforts already underway by families and advocacy groups at the community level. These policies should be context-specific and make specific recommendations for local municipalities. In addition to formal public acknowledgement, efforts should be taken to consult advocacy groups and experts to

incorporate an accurate account of abuses committed during the civil war into national school curricula in order to educate the next generation of human rights advocates in Nepal and ensure non-repetition of the abuses committed during the conflict.

About the authors: Ram Kumar Bhandari's father Tej Bahadur Bhandari disappeared on December 31, 2001. Mr Bhandari founded the Network of Families of the Disappeared in Nepal (NEFAD) in 2009 and is one of the foremost advocates for a system of transitional justice that addresses the needs of relatives, and co-founder of Committee for Social Justice.

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