

REPORT CIVIL LEGAL ISSUES RELATED TO THE FAMILIES OF THE MISSING IN NEPAL



ICRC



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REPORT

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RELATED TO THE FAMILIES

OF THE MISSING IN NEPAL

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1. INTRODUCTION

1.1 Background of the study

The 1996 A.D.-2006 A.D. armed conflict in Nepal resulted in a significant number of forced disappearances. The status of many of the missing—altogether 1,347 on the list of the International Committee of the Red Cross (ICRC)—is unknown even today, nearly eight years after the Comprehensive Peace Accord (CPA) was signed by the Government of Nepal (GoN) and the Communist Party of Nepal-Maoist (CPN-Maoist) on 21 November, 2006.¹ The list also contains reports of disappearances that took during the early stages of the conflict.

In the CPA, both the GoN and the CPN-Maoist promise to reveal information about the real first names, surnames and addresses of the people they disappeared² or held captive³ as well as

to ensure the rights of the victims of conflict and torture and the right of the families of disappeared persons to obtain relief.⁴ The CPA is not only a loose commitment of the parties of the armed conflict but also an integral part of the Interim Constitution of 2007, too: it was annexed as Schedule 4, which obliges the state to *"provide relief to the families of the victims who were subjected to disappearances"*.⁵

Unfortunately, neither party has fulfilled its commitments. Since the legal status of most disappeared persons is still not clear, their families have been unable to attain the benefits they are constitutionally entitled to. Aside from some insignificant ad hoc pecuniary and other support, these families have been left empty-handed.

1 Missing Persons in Nepal, Updated List - 2014, International Committee of the Red Cross, 2014, https://www.icrc.org/en/document/missing-persons-nepal-right-know-updated-list-2014#VQZx_ukcQdU

2 Sub-article 5.2.3, Comprehensive Peace Accord; Schedule 4, Interim Constitution of Nepal, 2063 B.S.

3 Ibid., Sub-article 7.3.2.

4 Ibid., Sub-article 7.1.3.

5 Article 33 (q), Interim Constitution of Nepal, 2063 B.S.

While the families of disappeared persons are constitutionally and politically entitled to truth, justice and other remedies, they have not been able to enjoy these rights because they lack political, institutional and legal support.

Before the armed conflict, involuntary and forced disappearance were so rare that the legal system did not see a need to address the associated issues. This dearth of proper legal provisions has subjected families of disappeared persons to undue suffering. The objective of this study was to identify the legal issues of concern to these families and suggest possible changes in legal and administrative practices that would eliminate or at least mitigate the legal complications and other problems they suffer.

1.2 Scope of the study

This study attempts to identify specific legal issues and complications that families of disappeared persons face. They include, among others, the division of common property (aansa banda), inheritance (aputali), the transfer of titles (namsari), marital relationships (nata kayam), and the dissolution of marriages (sambandha bichhed).

Information was gathered from the following sources:

1. Reports on studies conducted by relevant organisations,
2. Group and individual interviews with families of disappeared persons,
3. Group and individual interviews with field researchers who were involved with the victims,

4. Interviews with lawyers practicing in relevant fields,
5. A visit to the land revenue office of Kathmandu to observe the process of transferring immovable property to an heir and to check whether the property of any disappeared person has ever been transferred,
6. A visit to the legal department of the Nepal Rastra Bank (the nation's central bank) and interview with the legal officers there,
7. A visit to the Ministry of Peace and Reconstruction (MoPR) to solicit its view of ongoing cases, and
8. A review of all the relevant laws and precedents of the Supreme Court.

Annex 1 comprises a list of the persons interviewed, Annex 2 a list of the reports reviewed, and Annex 3, a list of the legislation and cases reviewed.

1.3 Limitations of the study

The problems of families of disappeared persons are many and complex. Interviews revealed that they suffer from serious social, psychological and cultural problems. Wives who lost their husbands, for example, report that family dynamics have changed, and many families say they no longer have faith in the political leaders they were devoted to. Some report suffering from deep-rooted insecurities and mental disturbances. Disputes among political parties have hindered progress in establishing two constitutionally-ensured truth-seeking mechanisms, the Truth and Reconciliation

Commission (TRC) and the Commission on Inquiry of Disappearance(CoID).

The scope of this study was limited to identifying civil (as opposed to criminal) legal issues and possible solutions. It focuses only on the following objectives:

- To identify the civil legal issues faced by the families of disappeared persons,
- To suggest changes in laws and administrative procedures,
- To suggest steps to be taken by directly affected families and other stakeholders to get the GoN to carry out the suggested changes,
- To suggest other lobbying strategies, including the use of media and strategic litigation and public interest litigation (PIL).

It must be noted that it is not enough to resolve the civil legal issues faced by families of disappeared persons. It would only fulfill a portion of the state's obligations towards the disappeared and their families stated in the CPA and the Interim Constitution.

2. ASSESSMENT OF PROBLEMS

To understand and assess the problems faced by the families of disappeared persons requires an in-depth knowledge of the relevant legal provisions. The first subsection of this chapter presents the constitutional and legal provisions that prevail and some relevant Supreme Court decisions. The second sub-section analyses those existing and pre-conflict laws which are directly related to voluntary and involuntary disappearance. The third and final sub-section presents the problems and issues which families of disappeared persons mention according to their own reports and the published and unpublished works of researchers.

2.1 Legal and constitutional recognition of forced and involuntary disappearances

Before the outbreak of the CPN(M) conflict in 1996 A.D., all provisions in Nepali law which addressed the issue of disappearance dealt with voluntary and involuntary disappearance in general, not disappearance specifically related to conflict. Human trafficking has

prevailed in Nepal for centuries. As for voluntary disappearance, it is common practice for Nepali males to go to India in search of employment and other opportunities. Cases of local agents' deceiving gullible youths and forcibly sending them to different parts of India continue to arise. In the past, such deception was more prevalent. With false assurances of high pecuniary benefit and repatriation after a few years, youths were sent to far-off places like Fiji, Mauritius, Suriname, Burma and Thailand for use as bonded labourers in sugarcane farming and coal mining. The majority never returned. Because they were illiterate and there was no effective communication system, such persons remained disappeared forever. In the eighties, when large numbers of Nepali people started travelling abroad and gaining international exposure, some Nepali settlements were founded in these destination countries.

The extent of group trafficking was so significant that this offence was defined and criminalised in amendments to the general codes of 1830 B.S. and 1910 B.S. (Muliki Ain, 1910 B.S.). Prior to 13 April 1925, slavery was legal in Nepal.

The chapter "Trafficking of Human Beings" of the Muliki Ain (General Code) dealt mainly with slavery-related transactions. That chapter was amended after slavery was abolished to include Section 3, which stated that, "[n]o one shall either with consent or by any other mean shall not send a person residing inside our border to a coal mine of foreign country or in any job across the sea. If any one violates this provision shall be punished by 7 years imprisonment for sending to work in coal mine and 10 years for sending across the sea."

While this provision is not directly related to forced disappearances, it does indicate that the issue has historical relevance and that legal provisions were enacted to address it. In fact, most of the prevailing laws related to disappearance were not created to address the current problem of forced disappearances that took place during the armed conflict. They only address ordinary disappearances. While no statutory law recognises forced disappearance as an offence with a distinct nature, the Interim Constitution does. Moreover, the Supreme Court has very clearly recognised the issue of forced disappearance and has even issued writ orders to address it.

The following provisions in the Interim Constitution speak about forced disappearance:

a) **Article 33 (q).** "*Obligation of the State: To provide relief to the families of the victims who were subjected to disappearance during the course of armed conflict based on the report of the inquiry commission constituted in relation to such persons;*"

- b) **Sub-article 5.1.1 (f) of Comprehensive Peace Accord.** "*Both parties have agreed to refrain themselves from...any act of kidnapping/arrest/ detention/ disappearance;*"
- c) **Sub-article 5.2.3 of Comprehensive Peace Accord.** "*Both parties agree to make public, within 60 days after the signing of the Peace Accord the real names, surnames and addresses of the people disappeared by them and of those killed during the war and provide information thereof to the family members, as well.*"
- d) **Sub-article 7.1.3 of CPA.** "*Both parties express the commitment that in accordance with law, impartial investigation shall be carried out in respect of, and action taken against, those persons who are responsible for obstruction in the enjoyment of the rights mentioned in this Peace Accord and ensure that impunity shall not be encouraged. In addition, they shall also ensure the right of the victims of conflict and torture and the right of the families of the disappeared persons to obtain relief.*"
- e) **Sub-article 7.3.2 of CPA.** "*Both parties shall fully respect the right of person to freedom and security and shall not arbitrarily or illegally detain any person nor shall kidnap, or take any person in hostage. Both parties agree to make public the status of the persons who have been disappeared and held in captivity by them and provide information in this respect to their families, legal advisers and other authorised persons.*"

The CPA is not only an agreement made between the GoN and the CPN (M) but comprises Schedule 4 of the Interim Constitution. The Supreme Court has recognised

this constitutional value of the CPA: "The CPA also has expressed commitment for ensuring enjoyment of rights established by the constitution; therefore court can direct the state to the norms and values expressed in the CPA."⁶

Some cases decided by the Supreme Court have not only recognised the issue of forced disappearance but have also given specific guidance through writ orders to government agencies. The precedents established in these cases are summarised below.

i. **Rajendra Dhakal and others vs Government of Nepal** (Writ No. 3575, Supreme Court decision, 1 June, 2007)

Before making this decision, the Supreme Court put together all 83 ongoing cases of habeas corpus, including that of Rajendra Dhakal, and, on 28 August, 2006, established a detainee investigation task force (DITF) to inquire into the forced disappearances of these individuals. The DITF report conclusively stated that "*Mr. Rajendra Dhakal was arrested on 8 January 1999 by a police team comprised of 10 to 12 policemen under the command of erstwhile Police Inspector K.B.R. (name omitted) of Area Police Office, Bel Chautara, and Tanahun*" and that "*he was disappeared on the same date*".

When it issued its ruling on 1 June, 2007, the Supreme Court endorsed the judicial finding of the DITF that Mr. Rajendra Dhakal and the other litigants were indeed disappeared persons and

ordered the GoN to enact domestic legislative measures that defined and criminalised forced disappearances. It also ordered the GoN to prosecute those officials found responsible for these crimes and provide substantial compensation to the disappeared and their families.

In its judgment, the Supreme Court acknowledged that there was lack of law to deal with the issue of forced disappearance. The judgment states, "*It is found that there is no law in our country with respect to addressing the incidences of disappearance during times of conflict and times of peace; it is also found that on matters pertaining to disappearance, such as arrest, detention, hostage taking, detention standards, the rights of the victims and the remedies available to them and their families, and provisions for effective investigation of disappeared persons, etc., there are no sufficient laws.*"

The Supreme Court also expressed the need for a reasonable statute to criminalise forced disappearance: "*In the absence of pertinent laws, no real, effective or practical investigation can be carried out. Further, under the existing criminal laws, no provisions adequately address the legal and institutional questions relating to disappearances. Therefore, for the purpose of addressing this problem effectively, it is necessary to urgently enact a law which includes provisions that the act of disappearance is a criminal offence, defining the act of disappearance pursuant*

⁶ Liladhar Bhandari v. Government of Nepal, Judgment No. 8012, Nepal Kanoon Patrika 2065 B.S., p. 1086

to the definition stated in the International Convention for the Protection of All Persons from Enforced Disappearance, 2006. The law must incorporate provisions on the right of detainees, the obligations of detaining authorities, the determination of the place of detention, the relationship and access of the lawyer and families to the detainee, and the right of the detainee to be informed of the reason of his detention. In addition, there must be provisions on judicial remedies available to a detainee; the availability of remedies to the detainee who is put in illegal detention as well as concerned persons and families who have become victims of illegal detention or disappearance; the right to compensation; a flexible statute of limitations that does not hinder the investigation process; the availability of a complaint filing mechanism and its role with respect to illegal detention or disappearance; the creation of formal detention centers with the stipulation that such centers are the only places where individuals may be detained; humanitarian treatment while in detention; adequate documentation of detention conditions including the time of the detention, the name, title, address and other relevant details of the person who ordered detention; the obligation to uphold such provisions when transferring the detainee; the right of the families to know all conditions of the detainee; the implementation of a process that ensures that those detainees who were allegedly released were, in fact, released; and adequate record keeping regarding his/her mental and physical condition. It is also equally important to enact a provision that uphold the international standard that pardon cannot be granted to persons who should be prosecuted for their alleged involvement in the act of disappearance,

as well as to persons who are convicted for their direct responsibility or complicity in the act of disappearance. For this purpose, it is expedient to adopt the International Convention for the Protection of All Persons From Enforced Disappearance as a guideline."

Finally, the Court instructed the GoN to act: "A directive order is hereby issued to respondents, the Government of Nepal, the Ministry of Home Affairs, and the Office of the Attorney General, to undertake the necessary measures to enact an act for the protection of disappeared person that includes provisions for a commission of inquiry to investigate the causes of their disappearance and the status of disappeared persons. The commission should be sufficiently powerful to carry out in-depth and comprehensive inquiries of said persons, and thereafter submit a report on their findings. Then, said respondents should initiate criminal investigations on the basis of the report and initiate prosecutions, based on propriety and necessity."

ii. Baburam Giri vs Government of Nepal and others (Judgment No. 8096, Nepal Kanoon Patrika, 2066 B.S., p. 41)

Mr. Baburam Giri, the general secretary of human rights organisation Nepal Manab Adhikar Sangathan (NMAS), filed a public interest litigation (PIL) petition with the Supreme Court in which he described the efforts of NMAS to pressure the GoN to locate the disappeared. He claimed that its pressure as well as that of other stakeholders, including families of disappeared persons, had forced the GoN to establish an investigation committee on 1 July, 2004 (2061/03/17), to locate

those individuals disappeared by the state. On 2 August, 2004, NMAS submitted a list of 433 state-disappeared persons for investigation, but when it released its report nine days later, on 11 August, 2004, the GoN revealed the status of just 24 of them. In response, Mr. Giri filed his petition demanding that the court issue a writ of mandamus to the GoN to reveal the whereabouts of the remaining 409. The case was pending for almost five years before the Supreme Court decided it on 22 April, 2008.

The Supreme Court then issued a directive to the GoN to fulfill its obligation toward disappeared persons, whether the disappearance was voluntary or involuntary. It observed that "*in their written replies the respondents have stated that they are doing necessary act to find out status of the disappeared persons. But they have failed to produce any substantive description or fact of their specific effort to find out status of the list of disappeared persons submitted by the petitioner. It is obligation of the Government to have proper information of those 409 disappeared persons. "Whether these disappeared persons are alive or not?" "If they are, where they are?" "Who, when and how have made them disappeared?" "Who are involved in such act?" "Whether such act of forced disappearance is an offence or not?" "If it is an offence what should be punishment for the perpetrators?" are the question which must be resolved for meaningful rule of law.*"

The Supreme Court concluded that "*State has an obligation to perform as guardian of citizens. Within this obligation right to protect existence of the citizen is most prominent one. Even in remote history of Nepalese legal system this right was*

ensured, thus in current developed conditions principle of such rights could not be denied. It is obligation of the Government to make the information public about disappeared persons whether the person was disappeared by the state or by other party or even by himself. State could not get immunity from this obligation therefore a directive order is issued to Government of Nepal to investigate whereabouts of these disappeared persons listed in annex 1 of the petition."

In both cases, the approach of the Supreme Court is significantly positive, but neither judgment addresses the problems encountered by families of disappeared persons, perhaps because no such problems were raised as issues to be decided.

2.2 Pre-conflict laws related to voluntary and involuntary disappearances and the appropriateness and applicability of such laws to the families of forcibly disappeared persons.

Though the existent laws dealing with disappearance were not made to address issues related to forced disappearance, some of their provisions nonetheless apply to the forced disappearances which occurred during the armed conflict.

i. Laws related to the presumption and recording of death

The Nepalese law of inheritance allows the inheritor of property to transfer its title only

after the bequeathed of that property has died.⁷ No jointly owned property of a family (common property) registered in the name of a disappeared person can be transferred to his/her spouse unless his death has been established.

The sections of the Evidence Act of 1974 B.S. and the Birth, Death and Other Personal Event Registration Act of 1976 B.S. that are relevant to the death of a disappeared person are quoted below.

Evidence Act, 1974 B.S.

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 claims it.”*

Section 7 (c) The court may presume the facts: *Unless otherwise proved- (c) If any incident, conduct of the persons or general trend of the acts, transactions reasonably leads towards certain presumption, the court may presume accordingly.*

Section 32 of the Evidence Act does not mean that it takes a disappeared person 12 years before his or her death can be presumed. It means that if, after 12 years of absence, a person claims that the purportedly disappeared person is alive, the burden of proof to prove

this claim lies on the claimant. However, both courts and administrative offices, including land revenue offices, have interpreted this section as presumption of death of the disappeared. In the case of *Umadevi Pokharel vs Lekhnath Pokharel*,⁸ for example, every member of the Supreme Court decided to consider the husband of the plaintiff to be dead because he had been missing for more than 12 years. They then awarded Ms. Pokharel full rights to his property.

The question to address is whether or not the same statutory period of 12 years should be applied to the presumption of death of a person who disappeared during the civil conflict at the hands of either the State or the Maoists. If this were the case, then courts would have the authority to presume their deaths under Section 7 of the Evidence Act if the context and likely consequences called for such a presumption. No precedent for such a decision yet exists, however, perhaps because no case has arisen.

Provision of Birth, Death and Other Personal Event Registration Act, 1976 B.S.

The Birth, Death and Other Personal Event Registration Act of 1976 B.S. is concerned with recording the deaths of persons. The following provisions of this act are relevant:

Section 2 (a). *“Unless the subject or context otherwise requires, in this Act “Personal Event” means birth, death, marriage, divorce and migration (change of residence) of a person.”*

7 Sections 1 and 2 in the chapter “Inheritance” of Muluki Ain, 2020 B.S.

8 Umadevi Pokharel v. Lekhnath Pokharel, Judgment No. 1526 Nepal Kanoon Patrika 2039 B.S., p. 1

Section 4. Information Regarding Personal Event. “(1) It shall be duty of the following persons to give information to the Office of the Local Registrar in the prescribed form for the registration of the personal event within thirty-five days of the occurring of such event in the following circumstance:

- (a) Notice of the birth or death, by the head of the family, and in his/her absence, from amongst one of the adult members of the family,”

Section 9. Validity of Registration. “The registration certificate issued pursuant to Section 6 shall be the evidence of occurring the personal event and such evidence may be submitted in any Office or Court and used in any personal transaction (activities).

Provided that, if it is proved that a person has received registration certificate by submitting false details, such registration certificate shall be revoked.”

It should be noted that a disappearance is not considered to be a personal event and that the date of a disappearance cannot yet be recorded under this act. Therefore, in order to invoke Section 32 of the Evidence Act, families of disappeared persons, courts and other administrative authorities have to rely on the hearsay of local persons rather than on a substantive certificate issued under a specific legal provision.

Village development committee (VDC) secretaries are designated as the registrars of the personal events included under the Evidence Act. In normal

cases in which there is no contest with regard to the succession of the property of a disappeared person, the VDC secretary, if requested, can provide a death certificate for that disappeared person after recording the statement of some local persons who confirm his or her death.

ii. Laws related to the right to represent a disappeared person

The chapter “Court Procedures” in the Muluki Ain gives the heir of a disappeared person a 35-day extension to serve as his or her representative in a case. To use this privilege, the heir must attend to the case within 35 days of the disappearance of the concerned individual. The exact provisions of the chapter follow.

No. 62(3) of the chapter “Court Procedures” of the Muluki Ain. “Where a person who is required to make presence on the time-limit or date fixed for making presence on a case for recovery or payment of a value or amount or foreclosure or recovery of property in accordance with law dies or becomes insane or disappears and consequently the time-limit or date fixed for making presence gets expired and the heir to that person (his or her rightful person or coparcener) makes presence in the office within thirty-five days, excluding the time required for journey, after the date of such death, insanity or disappearance and makes an application for the extension of the time-limit or date fixed for making presence and survival or continuation of case, the time limit or date fixed for making presence shall be extended. Provided that where the time-limit or date fixed for making presence falls on a day after thirty-five days of the date of such death or insanity or disappearance and the heir to that person (his or her rightful person or coparcener) makes presence

in the office on that time-limit or date and makes application for the survival or continuation of case, a leave shall be granted for such survival or continuation of case."

This provision obliges the legal successor of a disappeared person to decide if the person has indeed disappeared within 35 days of the date he or she is first noticed as missing. In short, while it is a legal obligation to declare a missing person "disappeared" within just 35 days of his or her first day of absence, in practice a 12-year waiting period has been imposed on the transfer of the immovable property of such a person.

Article No. 24 of the chapter "Punishment" of the Muluki Ain. This chapter has provisions for the obliteration of all records of a specific sentence of punishment for a person accused of carrying out a forced disappearance for a specific period.

Obligation to take care of the children of disappeared persons

Article 3 of the chapter "Pauper" of the Muluki Ain. This chapter addresses the custody of minors with disappeared fathers in these terms:

"In the case of a minor, whose father is dead or disappeared (bepatta) or has gone abroad and his or her mother enters into next marriage, the following provisions shall apply.

In the case of a minor who has no property (jayajetha) or who has no any adult heir in the joint family, the mother herself shall take the minor with her and subsist [sic] the minor."

iii. Other Laws Recognising Forced Disappearances

The Army Act of 2006 A.D. was promulgated after the success of the People's Movement and the restoration of the parliament. During the time it was being enacted, the overwhelming expectation was to make forced disappearances a serious criminal offence. Thus, the document includes a specific provision to penalise an army officer who has committed a forced disappearance. That provision, Section 62, reads as follows.

"62. Special provisions relating to offences of corruption, theft, torture and disappearance:

- (1) *Committing any acts which are defined as an offence of corruption, theft, torture or disappearance by prevailing law shall be deemed to have been committed the offence of corruption, theft, torture and disappearance.*
- (2) *There shall be a committee comprising of the following persons to conduct an investigation and inquiry into the offences provided in Subsection (1):*
 - (a) *Deputy Attorney General as designated by the Government of Nepal- Chairperson*
 - (b) *Chief of legal section of the Ministry of Defence-Member*
 - (c) *Representative of Judge Advocate General Department, not below the rank of Major (Senani)- Member.*
- (3) *The representative referred to in Clause (c) of Sub-section (2) shall be a person who is not concerned with to the Court Martial of the concerned case.*
- (4) *The original jurisdiction to hear and dispose of the case as referred to in Sub-section (1)*

- shall be on the Special Court Martial formed pursuant to Sub-section (1) of Section 119.*
- (5) *The committee formed pursuant to Sub-section (2) shall have the power equivalent to the power conferred on by prevailing laws to an investigating and inquiry officer in respect to those cases."*
- Since no law criminalises forced disappearances, the provisions of the above section, at least those regarding the offence of forced disappearances, are rendered ineffectual in practice.*

iv. Laws relevant to the inheritance and division of common family property

a) Common family property

Unlike the legal systems of neighbouring countries, the Nepali legal system has no concept of "personal law" based on the religion of an individual or his or her family except in a few exceptional cases related to marriage. The laws regarding division (ansa) and inheritance (aputali) of common family property, which are spelled out in the Muluki Ain, apply equally to all.

Articles Nos. 1-5 of the chapter "*Partition*" of the Muluki Ain has provisions related to the division of the property of a joint family. Article 1 asserts that all family members of a deceased person, i.e. his father, mother, wife, sons, and unmarried

daughters, have equal rights to the common family property to which the deceased can lay claim.

Article 18 of the same chapter states that a person is exempt from having to share his or her property with other coparceners if he or she earned that property through his or her individual knowledge, effort or skills. Such property is considered to be personal earnings (*niji aarjan*).

However, the Supreme Court has decided that neither a father's nor a mother's personal earnings or a husband's personal earnings for his wife could be claimed as personal earnings by their sons and daughters or wives respectively; on the contrary, such earnings must be divided among all inheritors in a joint family.⁹

Unless otherwise proved by substantive evidence of self-earning, any property registered in the name of any coparcener and earned during the period a family operates jointly is presumed to be common property.¹⁰ Several judgments of the Supreme Court support this position. In the view of the Supreme Court, not even a statement in the purchase deed stating that the property was an individually earned property can challenge the presumption of common ownership.¹¹

The sixteenth chapter of the Muluki Ain ("Inheritance") has relevant provisions, too.

9 Sabitri Thapa and others v. Parbati Thapa, Nepal Kanoon Patrika, 2064 B.S., p. 140.

10 Section 6(a), Evidence Act, 2031 B.S.

11 Sonama Devi Sonarni v. Rameshwari Devi Sonarni, Nepal Kanoon Patrika, 2046 B.S., p. 54.

Article No. 2 of this chapter gives the husband, wife, sons, unmarried daughters, and grandsons and unmarried granddaughters of the deceased an equal entitlement to any ancestral property subject to the other provisions of the chapter.

b) Inheritance of bank deposits

Regarding the inheritance of bank deposits

The Banking and Financial Institution Act of 2063 B.S. prevails over the Muluki Ain. Section 81 makes various provisions regarding claims on the bank deposit of a deceased person, as follows:

"Claim or title to deposits: (1) Claims of any person other than the actual depositor to deposits made with a licensed institution shall not be entertained. In the event of the death of the depositor, the person willed by him or her, if any, and if such beneficiary also dies or if no person has been willed by the depositor, the surviving person from amongst his or her relatives, in the following order, shall have first title to such deposits:

- (a) Husband or wife living in a joint family;
- (b) Son or daughter, or adopted son or adopted daughter, living in a joint family;
- (c) Father, mother, grand-son, or grand-daughter from the son's side living in a joint family;
- (d) Husband or wife, son, unmarried daughter, father or mother who is living separately;
- (e) Grand-father or grand-mother of the father's side, brother or unmarried sister, living in a joint family;
- (f) Nephew, niece, or step-mother living in an undivided family, or a grand-son or

unmarried grand-daughter from the son's side who is living separately;

- (g) Uncle, widowed aunt, sister-in-law (elder or younger brother's wife), or grand-daughter-in-law living in a joint family;
- (h) Brothers living separately;
- (i) Married sisters, grand-father, grand-mother, widowed daughter-in-law, grand-daughter-in-law, or nephew who are living separately.

- (2) *If there is no one in the order of priority referred to in Sub-section (1), the heir shall have the title to such deposit, and if there is not even an heir, the deposit shall accrue to the Government of Nepal.*
- (3) *Notwithstanding anything contained in the laws in force, no amount deposited with a licensed institution shall be handed over to anyone without the approval of the person who has the title thereto under Sub-section (1)."*

The above provisions are very clear. They do not enable the transfer of a bank account without a death certificate issued by the concerned VDC based on a 12-year period or other proof of death.

Transfer of Pension and other benefit

Regarding the receipt of the pensions and other benefits of a disappeared person, the employment rules of the institution concerned prevail. However, most such rules have no specific provision for disappearance. They only deal with cases in which death has been established.

2.3 Civil issues related to the families of persons who disappeared during the conflict

2.3.1 Recognition and identity-related issues

2.3.1.1 Problems in establishing and recording disappearances

Interviews with families of disappeared persons and researchers revealed that though the constitution recognises the problem of forced disappearance, no statutory law has been enacted to recognise it or to record or certify the disappearance of a person. In fact, no legal procedure has been prescribed to establish or record disappearances of any sort. Ad hoc mechanisms of filing petitions to local peace committees or district administration offices are yet not recognised by law and their recommendations are useful only for receiving those benefits granted by the government.

The research of other stakeholders also found that most interviewees expressed a need for certificates of disappearance which certified at least two things:

- i. The disappearance of a family member and
- ii. The relationship of the certificate holder with the disappeared person.

The wives of the disappeared spoke of the troubles they have faced while applying

for citizenship cards and securing proof of relationships, recommendations, and the like.¹²

2.3.1.2 Problems in establishing marital and paternal relationships with disappeared persons

The wives of the disappeared face social and cultural pressure from their communities.¹³ During the armed conflict, it was common for women to marry party cadres in the field without the knowledge of both spouse's parents and other relatives. After the peace accord, the wives of those cadres who had disappeared or died found that their husbands' families did not readily accept them as in-laws, especially if:

- I. no child had been born or
- II. the wife was a Dalit.

Other factors that motivated rejection included the following:

- i. **Economic.** Relatives did not want the additional liability of having to take care of the wife of a disappeared or deceased person, nor did they wish to be obliged to share property with her, particularly if she chose to remarry after receiving that property.
- ii. **Social.** Families did not want to face the possibility of being out casted or ostracised by society if they accept a Dalit as an in-law, especially if they had no proof she really had married the disappeared or deceased person.

Such rejections often made it difficult for the wife to register her marriage or birth of a child

12 Report of the Targeted Group Discussion on the Financial and Social Situations of Wives in the Families of the Disappeared conducted on Poush 1, 2069 B.S, Manpur Tapara, Bardia, International Center for Transitional Justice (ICTJ).

13 ICTJ Briefing, August 2013, p. 9.

as well as to receive a certificate of relationship with the disappeared or deceased person.

In some cases in which no relationship had been established, the wives and children of the disappeared persons have been deprived of the benefits and government allowances given to family members.¹⁴ One woman was forced to marry a second time because she was unable to obtain a citizenship certificate or proof of relationship with her disappeared husband.¹⁵ The existence of more such cases cannot be ruled out. A survey conducted by the International Center for Transitional Justice (ICTJ) discovered that only 14.5% of the 394 wives of the disappeared surveyed (roughly 30% of the total 1,400) had some form of entitlement to immovable property.¹⁶

This issue could be legally addressed by providing identity cards that verify and recognise the members of the families of the disappeared persons. The wives of the disappeared suggested that such cards or even recommendations could be used to facilitate the cumbersome process of transferring property to families of disappeared persons.¹⁷ During a group discussion in Dhading, the wives of the disappeared suggested that once the government had recognised a person as being a disappeared persons, the title of

all his movable and immovable properties be transferred to his wife.¹⁸

2.3.1.3 Directives to issue identity card to the families of those killed or disappeared during the political conflict, 2069 B.S.

During Baburam Bhattarai's tenure as Prime Minister, the GoN issued a directive to issue identity cards to the families of those killed or disappeared during the political conflict. The scope of this 2069 B.S. directive was to provide identity cards to the families of those killed or disappeared person during a variety of conflicts, including

- i. Maoist People's War
- ii. Historical People's Movement
- iii. Madhesh / Tarai Movement
- iv. Indigenous People's Movement (Janajati Andolan)
- v. Dalit and Backward People's Movement
- vi. Chure-Bhawar Movement and
- vii. Movements of other communities with justifiable demands.

The objective of the directive was to distribute identity cards to the families of the killed and disappeared. It was expected that such cards would help recipient families' access to governmental grants, compensation and other financial support.

14 ICTJ case study of Badhalpur-8, Bardia.

15 ICTJ case study of Archana Choudhary, Badhalpur-9, Jayapur, Bardia.

16 ICTJ Briefing, August 2013, p. 7.

17 Report of the Targeted Group Discussion on the Financial and Social Situations of Wives in the Families of the Disappeared conducted on Poush 1 and 2, 2069 B.S, Gulariya and Manpur Tapara, Bardia, ICTJ.

18 Report of the Targeted Group Discussion on the Financial and Social Situations of Wives in the Families of Disappeared conducted on Poush 14, 2069 B.S Naubise, Dharke, Dhading, ICTJ.

19 Suman Adhikari v. Government of Nepal Prime Minister's Office, Writ No. 070-wo-0032 filed on 24 July, 2013 (2070/4/09)

The process of applying for identity cards as well as of recording such applications and issuing the cards was described in the directive.

Section 1.2 states that the directive will commence on the day it is accepted by the GoN but mentions nothing about the authority or law upon which such cards are to be issued.

Suman Adhikari and others filed a PIL against the GoN claiming that the directive was unconstitutional and should be nullified.¹⁹

On 12 August, 2013, (2070/4/28), the Supreme Court division bench issued an interim order to stop the implementation of the directive and maintain the status quo: "thinking whether the interim order should be issued or not in this issue, it is found that the terms included in the Directives to Issue Identity Card to Family of Killed or Disappeared Person during the Political Conflict, 2069 B.S., are beyond the scope of terms expressed in article 33 of the Interim Constitution 2063 B.S. and in existence of issue of whether all parties of the conflict and victims of the conflict are included or not and as legal basis of issuing such directives by the Cabinet of Minister has not been clarified, therefore considering the fact that except in accordance to the constitution or by judicial resolution, issuance of any such identity card or implementation of such directives could not be allowed now. Therefore, until the disposal of this

case, do not implement the directives and stop the implementation as it is."

The time the Supreme Court ordinarily takes to dispose of such cases is about two-and-a-half years, so unless it intervenes strategically, the directive will not be implemented for at least two years. Moreover, until the case is decided, the GoN will probably not consider any alternatives as the issue is sub judice.

2.4 Representation-related issues

Problem of representation and defence in suits filed against disappeared persons

As stated above, Article 62(3) of the chapter "Court Procedures" of the Muluki Ain declares that any of the successors of a disappeared person can attend a case on behalf of that disappeared person as long as it is within 35 days of the first day of his or her disappearance. However, in a number of cases, persons were disappeared during detention and their families were unsure whether to consider them detained or disappeared. For this reason, no family member attended any ongoing proceedings before the 35-day limit had expired.

¹⁹ Suman Adhikari v. Government of Nepal Prime Minister's Office, Writ No. 070-wo-0032 filed on 24 July, 2013 (2070/4/09)

Problems in representing disappeared people to tax officers, formal sector lenders, municipal officials, land revenue officers, and other public utility providers

Most government offices which collect revenue or charges, including internal and land revenue offices and other service providers, do not allow a family member of a disappeared person to represent that person. In all but the most exceptional of cases, they require proof of death in order to transfer property or even water or electricity supply subscription.

2.5 Inheritance, transfer of property and liability-related issues

- Problems in transferring the property of a disappeared person to his or her successor**

- Movable properties like motor vehicles, bank deposits, shares, gratuities, and pensions**

Without proof of death, none of above movable property can be transferred to or inherited by the successor or successors of a disappeared person. Families must either wait 12 years or get the VDC to make a death certificate by providing inaccurate information.

- Immovable properties, house, land and land tenancy rights**

Since, all transfers of immovable property must be recorded and the deeds registered at one of Nepal's land revenue offices,²⁰ no transfer can be implemented in the case of a disappeared person. The family of a disappeared person must either wait the stipulated 12 years or get a death certificate from the VDC by providing false information.²¹ This provision has forced the wives of the disappeared to live with their in-laws against their wishes because they cannot get property registered in their husband's names transferred to their own names.²² Wives have also been denied their share of family property.²³

Land tenancy can be transferred only through one of Nepal's land reform offices,²⁴ which itself can act only if the death of tenant is established. A claim of disappearance is not sufficient evidence for a land reform office to act.

- Common family property that has been mortgaged**

In several cases, disappeared persons had mortgaged family property as collateral to a bank or other financial institution.

20 Article 1, "Registration," Muluki Ain, 2020 B.S.

21 Report of the Targeted Group Discussion on the Financial and Social Situations of Wives in the Families of the Disappeared, Kapilvastu, Narad Ram Poudel, ICTJ; ICTJ Case Study of Naradram Poudel, Chanayi, VDC-1, Kapilvastu.

22 ICTJ Case Study of Radhika Sapkota, Jiwanpur, VDC-9, Dhading.

23 Report of the Targeted Group Discussion on the Financial and Social Situations of Wives in the Families of the Disappeared conducted on Poush 14, 2069 B.S Naubise, Dharke, Dhading, International Center for Transitional Justice.

24 Section 26, Land (Related) Act, 2021 B.S.

When their families wanted to sell such property to pay off their debts and meet their needs, they found themselves unable to do so. Strictly speaking, these families after paying even the debt for which the property was mortgaged, would have to wait until the death of the disappeared person has been established. In most such cases, this provision resulted in families being forced to give up the mortgaged property for auction because they did not have sufficient resources to make mortgage payments.

2.6 Compulsion to presume death

Most administrative authorities and courts presume death only after 12 years of absence, but even if 12 years have elapsed, there can be no succession unless the authority concerned presumes death or a family member claims it. Land revenue offices and banks require a death certificate before allowing the property of a disappeared person to be passed on. Such a certificate may be issued by a VDC secretary only after 12 years of absence without any communication. In other words, unless the parties concerned accept the death of the disappeared person, inheritance of his or her property is impossible.

In an exceptional case in Nawalparasi District, a land revenue office transferred the property of a disappeared person to his wife and children even though there was no death certificate because the wife categorically denied he had died and refused to make an application to the contrary. In this case, the land revenue officer decided to transfer the property because, after 12 years, he himself presumed the man was dead.

This case demonstrates that even if it does not wish to, a family of a disappeared person is compelled to declare or tacitly accept the death of that disappeared person in order to inherit or transfer property.²⁵

2.7 Re-marriage of a disappeared person's spouse and dissolution of marriage with a disappeared person

A marriage can be dissolved only with a person who is living. To dissolve a marriage, one spouse needs to file a complaint against the other in court. In the case of a disappeared person, as long as his or her status remains disappeared and not dead, his or her marriage will remain valid. If a marriage is not dissolved, remarriage constitutes adultery and a wife of a disappeared person who engages in such an offence loses her coparcener right to the property of her disappeared husband.

²⁵ Report of the Targeted Group Discussion on the Financial and Social Situations of Wives in the Families of the Disappeared, Kapilvastu, Narad Ram Poudel, ICTJ.

In other cases, families of disappeared persons have pressured the wives of disappeared men to remarry. Sometimes pressure is exerted so that a wife will not get any of the property of her first, disappeared husband after remarriage.²⁶

2.8 Changed marital status of a wife of a disappeared person who remarries an in-law

If the wife of a disappeared person remarries, she relinquishes her coparcener's right to that person's property and is entitled only to the property of her current husband. In some cultures, remarriage with a younger brother-in-law is culturally permissible, just as a second wife is. In some districts it was reported that younger

brothers-in-law remarry the wives of their disappeared older brothers just so that they lose their right to their previous husband's property and then abandon them.

2.9 Discrimination between widows and the wives of disappeared persons

Widows and the wives of disappeared persons are not treated equally. The MoPR used to provide a smaller grant to wives than to widows, and, while it no longer does so, the GoN, under the Fiscal Act, provides monthly social security allowances only to widows and not to the wives of disappeared persons.

26 ICTJ Case Study of Radhika Sapkota, Jiwanpur, VDC-9, Dhading.

3. POSSIBLE SOLUTIONS

3.1 Directives from government on some issues

The GoN may issue directives on certain issues. Although the issuance of directives might not be one of its priorities, it does, under the Internal Administrative Directives Rules of 2028 B.S., have the authority to do so in order to establish specific procedures on specific issues. In particular, the GoN can require that the titles of ownership of disappeared person's property be transferred as provided for in the Muluki Ain under coparceners' rights. While such a directive cannot amend a law, it can ensure that the laws and rulings of the Supreme Court are implemented.

According to the law, the spouse, sons and unmarried daughters of a deceased person have equal rights of inheritance to his or her property. Ordinarily, when titles are transferred based on inheritance rights, the district land revenue office either transfers the property in

the joint names of all the family members or, after securing the consensus of all, to any one or more of those inheritors. The Supreme Court has decided in several cases that the transfer of inherited property in the name of one family member does not abrogate the rights of the other family members to that same property.²⁷ In fact, the transfer of a share of common property to one coparcener does not in any way affect the rights of the other coparceners to their shares of that common property. The GoN should issue a directive to land revenue offices to transfer partial ownership to the coparceners of disappeared persons.

3.2 Required changes in Nepal's laws and the justifications for such changes

For the long-term resolution of the problems outlined above, Nepal's civil and property law regarding disappeared persons needs to be

²⁷ Mahesh Kumar Gorkhali V. Krishna Lal , Nepal Kanoon Petrika 2069 B.S. p. 1597, Sukai Chamar v. Batohi Chamar Nepal Kanoon Patrika, p. 381

changed, either by promulgating a new statute or by amending the existing ones.

Countries such as Argentina²⁸ and Brazil²⁹ have enacted specific legislation dealing with the legal status of disappeared persons. Both countries treat the disappeared as legally dead.

3.2.1 Template of legislation to address the civil legal issues faced by the families of disappeared persons

Families of the disappeared (legal enablement and removal of hindrances) act

An act to rectify the civil legal and administrative hindrances faced by the families of disappeared and missing persons and matters connected therewith or incidental thereto.

Section 1. Title and extent of operation of the legislation

- (1) This legislation be called the Families of the Disappeared (Legal Enablement and Removal of Hindrances Act), 2071 B.S.
- (2) Its provisions extend across the nation.
- (3) Its provisions also extend to families of the disappeared residing outside of Nepal.
- (4) This act shall come into force immediately upon the President's assent.

Section 2. Definition of a disappeared person

- (1) In this act, unless the context otherwise requires, "disappeared" means a person

whose whereabouts are not known owing to abduction, arrest, detention or any other act resulting in the deprivation of personal liberty which took place in connection with the armed struggle or political activities alleged to have taken place between _____ and _____

- (2) Notwithstanding anything contained in sub-section (1), the persons named in Annex I of this legislation shall also be considered "disappeared" unless the contrary is proved.

Section 3. Definition of a family of a disappeared person

- (1) In this act, the family of a disappeared person includes, but is not limited to,
 - i. Spouse
 - ii. Parents
 - iii. Grandparents
 - iv. Siblings
 - v. Children
 - vi. Grandchildren
- (2) Notwithstanding anything contained in sub-section (1), oral or documentary evidence can be used to establish proof of marriage in the absence of legal registration.

Section 4. Disappeared persons to be considered legally absent

- (1) All disappeared persons shall be considered to be absent for all legal purposes.

28 Law No. 24,321, Argentina, 11 May, 1994.

29 Law No. 9140, Brazil, 4 December, 1995.

- (2) The civil legal effects of such a consideration shall be similar to those which apply to a legally dead person.
- (3) Notwithstanding anything contained in any other law for the time being in force, such legal absence shall be considered only after three years have elapsed from the time when the whereabouts of the disappeared were last known to his or her network of social and personal relations.

Section 5. Legal enablement for families of disappeared persons

- (1) The Government of Nepal shall expeditiously make all necessary arrangements for the issuance of cards identifying the family members of disappeared persons.
- (2) Cards bearing the name of the concerned disappeared person and his or her family members shall be issued to all family members.
- (3) Notwithstanding the provisions of subsections (1) and (2), families of disappeared persons shall be entitled to seek administrative assistance on the basis of a certificate of proof.
- (4) Notwithstanding anything contained in any other law for the time being in force, the requirement that a death certificate be used to establish death shall cease to exist for all disappeared persons.

Section 6. Spouses of disappeared persons

- (1) Unless otherwise desired by the spouse of a disappeared, it shall be presumed that all marriages with disappeared persons will be dissolved.

- (2) If the spouse of a disappeared person chooses to remarry, he or she shall be entitled to half of the property of the disappeared.
- (3) The spouse shall have the right to preferential custody over any children born to the couple.

Section 7

This legislation shall only have civil legal effects. Nothing in this legislation is to be interpreted to mean that the situation of forced disappearance has ceased or that legal absence interrupts the iter criminor or allows the initiation of the legal period for the application of the statute of limitations.

Section 8 : Overriding effect of the act

The provisions of this act and the schemes promulgated hereunder shall have effect notwithstanding anything to the contrary or inconsistent therewith contained in any other law for the time being in force.

3.2.2 Amendments to existing laws

A list of suggested amendments follows.

- a. Change Birth, Death and Other Personal Event Registration Act, 1976. Include disappearance as a personal event and provide for recording and certifying disappearance.
- b. Change laws on inheritance and representation related to disappearance.
 - Ensure that in cases of continued disappearance exceeding a specified period the property of the disappeared can be inherited or its ownership

transferred to his or her legitimate successors.

- In cases of disappearance in which the possibility of return is minimal (as after an accident, war, natural or man-made calamity) after a specific period (perhaps six months) elapses, allow the transfer or succession of property as well as the taking of a loan, transfer of movable properties and subscriptions to public utilities, and representation in litigation.
 - Change banking and service laws to allow the spouse of a disappeared person to inherit bank deposits, pensions and gratuities and sell mortgaged properties.
- c. Harmonisation of property and marital laws
- The laws governing marriage and matrimonial relations need to be changed to cater to current needs. They must include at least the following provisions:
- The legal status of widows and the wives of disappeared persons with regard to their obligations and rights to joint family property and their

husband's earnings shall be the same.

- The wives of disappeared persons shall receive the same entitlements as widows with respect to social security benefits, division of common property, inheritance, marriage, remarriage, and the dissolution of marriage.
- Like a widow, the wife of a disappeared person shall be entitled to inherit her husband's property before remarrying.
- If a widow or wife of a disappeared person remarries, her right to her previous husband's property shall remain unaffected.
- A significant number of disappeared persons are from the lower-middle and lower classes. Some depend on their land tenancy for survival but have not been able to transfer tenancy rights into their own names. Section 26 of the Land (Related) Act, of 2021 B.S. should be amended to allow the transfer of the tenancy of a disappeared person to his or her legal successor.

4. STRATEGIES TO ACHIEVE SUCH CHANGES

Amending a law is a complex and time-consuming process that requires the collaborative effort of all stakeholders. Without a strategy, it will be hard to achieve any changes.

4.1 Submission of formal application to the Government of Nepal

Families of disappeared persons and non-governmental organisations working in this area should make a formal application to the GoN for amending various statutes using a three-column table outlining the proposed amendment, the problem, and the justification for the change.

4.2 Use of media

The issues of families of disappeared persons are not a priority for either the GoN or media organisations. The media are largely unaware

of the pain and suffering of these families and wrongly believe that transitional justice applies only to the recently constituted Truth and Reconciliation Commission, the criminalisation of disappearance and prosecutions of perpetrators. They rarely examine "soft issues." However, the media could push for holding a general referendum in favour of these issues and pressure the GoN and parliament to make the necessary amendments to existing laws.

4.3 Lobbying the National Human Rights Commission and the National Women's Commission

Both these commissions can be lobbied so that they begin to advocate on behalf of families of disappeared persons with the GoN and parliamentarians. Because they are formal, statutory institutions, the voices of these organisations will be considered seriously.

4.4 Public interest litigation against the Ministry of Peace and Reconstruction

Identity cards were the brainchild of Baburam Bhattarai, but putting their issuance use into practice will require the commitment of the MoPR and the current GoN, neither of which have shown much interest. Though a writ petition is unlikely to be dismissed, PIL can be used to force the authorities concerned to launch this initiative, especially if the media take up the side of the petitioners.

4.5 Collaboration with the families of persons who disappeared in Uttarakhand

A cloudburst and heavy rainfall in Uttarakhand on 16-17 June, 2013, affected 12 out of its 13 districts and four—Rudraprayag, Chamoli, Uttarkashi and Pithoragarh—quite badly. About 5,000 persons were killed and more than 1700, including 50 Nepali nationals working or on pilgrimage in the area, were reported missing. The disappeared include seven elderly people from Kathmandu. The Indian Police issued certificates of disappearance, but these are of little use in managing the property of the deceased. Mugdha Upadhyaya, a resident of Kathmandu Baneshwar and the daughter and legal heir of one disappeared person is planning a PIL to address the legal ramifications of such a disappearance. Her suit would be more effective if the families of forcibly disappeared persons joined her.

5. OTHER RECOMMENDATIONS

5.1 Dissemination of legal information to the families of disappeared persons

Interviews with the families of disappeared persons clearly revealed that they lacked proper legal information and were thereby extremely vulnerable to exploitation and abuse. Publishing a booklet with relevant laws, cases, and procedures described in simple language would help to cover this gap.

5.2 Creating a group of lawyers who provide free legal aid and counselling

It would be very useful to provide access to legal counselling with experienced lawyers so that families of disappeared persons can clarify points of confusion and ask questions. Creating a group of lawyers willing to provide pro bono assistance and a mechanism to manage service provision would be beneficial.

Annex 1

List of interviewed persons

- Ajaya Mahara
- Bhagiram Chaudhary (Bardiya)
- Bhim Bahadur Nepali (Jumla)
- Dharma Bahadur Chaudhary (Kanchanpur)
- Ganga Pokhrel
- Geeta Rasaillee (Kavre)
- Jas Bahadur Rai (Udayapur)
- Poonam Sharma
- Rajeev Chaudhary
- Ram Kumar Bhandari
- Ramkaran Yadav (Dhanusha)
- Ramujagir Chaudhary (Kapilvastu)
- Renu Karna (Siraha)
- Sabitri Khadka (Baglung)
- Santosh Mishra
- Sharmila Lama (Kavre)
- Shree Kumari Roka (Rolpa)
- Suman Acharya
- Tanka Devi Kafle (Jhapa)
- Zinita Dhakal

Annex 2

List of the reports reviewed

- Missing Persons in Nepal, Updated List - 2014, International Committee of the Red Cross, 2014, available at https://www.icrc.org/en/document/missing-persons-nepal-right-know-updated-list-2014#.VQZx_ukcQdU
- Families of Missing Persons in Nepal: A study of their needs- April 2009, International Committee of the Red Cross, available at <https://www.icrc.org/eng/resources/documents/report/nepal-missing-persons-report-300609.htm>
- Report of the Targeted Group Discussion on the Financial and Social Situations of Wives in the Families of the Disappeared conducted on Poush, 2069 B.S, Kapilvastu, Bardiya, Dhading, International Center for Transitional Justice (ICTJ).
- Beyond Relief: Addressing the Rights and Needs of Nepal's Wives of the Disappeared, International Center of Transitional Justice (ICTJ) Briefing, August 2013.

Annex 3

List of relevant legislation and Supreme Court cases

- i. Evidence Act, 1974 B.S.
- ii. Personal Event Registration Act, 1976 B.S.
- iii. Chapter on "Court Procedures" of the Muluki Ain, 2020 B.S..
- iv. Chapter on "Pauper" of the Muluki Ain, 2020 B.S.
- v. Chapter on "Partition" of the Muluki Ain, 2020 B.S.
- vi. Chapter on "Inheritance" of the Muluki Ain, 2020 B.S.
- vii. Chapter on "Matrimony" of the Muluki Ain, 2020 B.S.
- viii. Chapter on "Women's Property" of the Muluki Ain, 2020 B.S.
- ix. Land (Related) Act, 2021 B.S.
- x. Army Act of 2063 B.S.
- xi. Bank and Financial Institution Act, 2063 B.S.
- xii. Unified directives of Nepal Rastra Bank
- xiii. Directives issued to Land Revenue Offices by the Department.
- xiv. Law No. 24,321, Argentina, 11 May, 1994
- xv. Law No. 9140, Brazil, 4 December, 1995.
- xvi. Comprehensive Peace Accord; Interim Constitution of Nepal, 2063 B.S.
- Umadevi Pokharel vs Lekhnath Pokharel, Judgment No. 1526, Nepal Kanoon Patrika (Nepal Law Journal), 2039 B.S., p. 1
- Sonama Devi Sonarni vs Rameshwari Devi Sonarni, Judgement No. 3700, Nepal Kanoon Patrika(Nepal Law Journal), 2046 B.S., p. 54
- Sukai Chamar vs Batohi Chamar, Judgement No. 6567, Nepal Kanoon Patrika (Nepal Law Journal), 2055 B.S., p. 381
- Sabitri Thapa and others vs Parbati Thapa, Judgement No. 7814, Nepal Kanoon Patrika(Nepal Law Journal), 2064 B.S., p. 140.
- Rajendra Dhakal and others vs Government of Nepal, Judgment no 7817, Nepal Kanoon Patrika (Nepal Law Journal), 2064 B.S., p. 169
- Liladhar Bhandari and others vs Government of Nepal and others, Judgment No. 8012, Nepal Kanoon Patrika (Nepal Law Journal) 2065 B.S., p. 1086
- Baburam Giri vs Government of Nepal and others, Judgment No. 8096, Nepal Kanoon Patrika(Nepal Law Journal), 2066 B.S., p. 41
- Mahesh Kumar Gorkhali vs Krishna Lal , Judgement No. 8909, Nepal Kanoon Patrika (Nepal Law Journal), 2069 B.S., p. 1597
- Suman Adhikari vs Government of Nepal Prime Minister's Office, Writ No. 070-wo-0032 filed on 24 July, 2013 (2070/4/09)

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement. It directs and coordinates the international relief activities conducted by the Movement in armed conflicts and other situations of violence.

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