

Nepal's Transitional Justice Process: Challenges and Future Strategy

A Discussion Paper

August 2017

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1. Introduction

Nepal's decade-long armed conflict ended in 2006, leaving behind thousands of unresolved cases of gross human rights violations and abuses and serious violations of international humanitarian law committed by both parties to the conflict: the Government, including the then Royal Nepal Army; and the Communist Party of Nepal (Maoist). These abuses include unlawful killings; torture, including rape and sexual violence, and other ill-treatment; and enforced disappearances.

More than ten years later, as in the years preceding the civil war, political expediency has trumped calls for justice and accountability. There has been near absolute impunity for those responsible for serious crimes under international law, and few victims have had access to an effective remedy and reparation for the abuses they have suffered. Established transitional justice mechanisms such as the Truth and Reconciliation Commission (TRC) and Commission on Investigation of Disappeared Persons (CoID) have fallen short of international standards, both in constitution and operation, despite the repeated reinforcement of such standards by the Supreme Court of Nepal. In addition to their deeply flawed mandates, the non-consultative and opaque approach of the Commissions has created distrust with all major stakeholders including conflict victims and members of civil society, who remain suspicious of the transitional justice process.¹

Yet, both Commissions, which were originally constituted for a period of two years, were extended for another one year in February 2017. With the Government resisting calls to amend their mandates to accord with international standards, civil society organizations and victims' groups are at a crossroads: should they continue the practice of "critical engagement" with the COIs or should they stop working with them and demand a more effective transitional justice system? Or should they focus on strengthening the independence and capacity of regular criminal justice institutions, empowering them to investigate and prosecute conflict-related human rights violations and provide effective remedy and reparation for victims?

In this context, the ICJ convened meetings with key stakeholders in the transitional justice process to discuss recent developments and frame future strategies. This paper summarizes the discussions during the consultations, framing them within the larger context of civil society engagement with the transitional justice process.

2. Background

Nepal faced a protracted internal armed conflict from 1996 to 2006. In the decade-long conflict, serious human rights violations and abuses were committed by both sides: the Government, including the then Royal Nepal Army; and the Communist Party of Nepal (Maoist). These egregious

¹ In referring to "transitional justice", the ICJ takes this term to mean "justice in transition". There should be no question of a different standard or quality of justice to be applied to societies that are in transition, although there may be certain mechanisms and processes established to complement the ordinary justice mechanisms, provided that the judicial role is preserved.

crimes, which included widespread and systematic practices of unlawful killings, enforced disappearances, torture, including rape and other sexual violence, and other ill-treatment, were aided and abetted by a climate of political and legal impunity for perpetrators.²

A Comprehensive Peace Agreement (CPA) put an end to the conflict on 21 November 2006, with both sides agreeing to hold perpetrators of human rights violations and abuses accountable and provide access to effective remedies and reparation to victims. More than ten years later, however, these promises remain largely unfulfilled.

On 8 October 2012, the United Nations Office of the High Commissioner for Human Rights (OHCHR) released a comprehensive report documenting and analyzing serious violations of international law, along with a database of around 30,000 documents. The report archives records up to 9,000 serious violations of international human rights law or serious violations of international humanitarian law.³

The Government responded to widespread calls for accountability for human rights violations during Nepal's conflict by enacting the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act in 2014. Pursuant to the Act, two Commissions of Inquiry (COIs) were established in February 2015: the Truth and Reconciliation Commission (TRC), which has a mandate to investigate cases of serious human rights violations including unlawful killings, sexual violence, torture and a range of other serious crimes committed during the conflict; and the Commission on Investigation of Disappeared Persons (CoID), which has a mandate specific to enforced disappearances. The COIs were established initially for a two-year period but, in February 2017, their mandates were extended for one more year.

Despite repeated Supreme Court rulings that any mechanism for transitional justice must conform to international standards and lead to criminal accountability for gross human rights violations,⁴ these Commissions continue to have a legally flawed mandate which, among other problems, allows the Commissions to recommend amnesties for gross human rights violations. In addition, the legislation establishing the Commissions does not provide sufficient guarantees for the independent

² See *International Commission of Jurists*, "ICJ mission to Nepal urges human rights measures to ensure stability and long term peace", 3 November 2006, accessed at: <https://www.icj.org/icj-mission-to-nepal-urges-human-rights-measures-to-ensure-stability-and-long-term-peace/> and *International Commission of Jurists*, "Authority Without Accountability: the struggle for justice in Nepal", October 2013, at: <https://www.icj.org/uk-court-decision-a-victory-in-the-struggle-for-justice-in-nepal/>, *International Commission of Jurists*, Briefing Paper, "Compromising Justice: Nepal's Proposed Ordinance on Commission on Disappeared Persons, Truth and Reconciliation, 2012" October 2012, available at <https://www.icj.org/wp-content/uploads/2012/10/TJ-Ordinance-Briefing-Paper-FINAL-VERSION.pdf> and *International Commission of Jurists*, Briefing Paper "Justice Denied: the 2014 Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act" May 2014, Briefing Paper available at: <https://www.icj.org/wp-content/uploads/2014/05/Nepal-TRC-Act-Briefing-Paper.pdf>.

³ UN Office of the High Commissioner for Human Rights, Nepal Conflict Report, October 2012, accessed at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf

⁴ See, for example, *International Commission of Jurists*, "Nepal: Government must implement landmark Supreme Court decision against impunity", 27 February 2015, at URL <https://www.icj.org/nepal-government-must-implement-landmark-supreme-court-decision-against-impunity/>

and impartial operation of the Commissions and the Commissioners, making them vulnerable to political pressures.⁵ For these reasons, the UN Office of the High Commissioner for Human Rights (OHCHR) has also refused to provide technical support to the COIs.⁶

As of July 2017, the TRC has received 58052 complaints of human rights violations, and the CoID has received 2874 complaints of alleged enforced disappearances. At the time of writing, with just seven months left into their extended mandate, they have not initiated investigations into any of these cases.

That the COIs are not working comes as no surprise. Nepal has a long history of establishing Commissions of Inquiry to investigate matters of public importance, including allegations of gross human rights violations. Though ostensibly formed to provide a measure of public accountability, COIs have promoted impunity by diverting investigation of human rights violations and crime from the criminal justice process into a parallel *ad hoc* mechanism vulnerable to political interference and manipulation. In a number of cases, the Attorney General's office has refused to prosecute conflict-related crimes on the basis that only the COIs have the mandate to recommend cases for action.⁷ This is despite Supreme Court rulings that transitional justice systems may complement the regular criminal justice system, but cannot replace it.⁸

3. Overview of the consultations

The ICJ convened regional consultations in three different regions i.e. Kaski (Pokhara), Morang (Biratnagar) and Banke (Nepalgunj) and a national level round table meeting in Kathmandu in May and June 2017. Participants in these meetings included conflict victims, representatives of human rights organizations, and lawyers. The participants were selected on the basis of their active role in the transitional justice process and their work towards strengthening the rule of law in the country, which an emphasis on including representatives from the conflict-affected districts of the particular region in which the consultations were held.

The ICJ also held consultative meetings in Biratnagar, Pokhara, Baglung, Nepalgunj and Bardiya with secretaries of Local Peace Committees (LPC); officials of the District Police office; judges; lawyers; and officials of National Human Rights Commission's regional office to get their

⁵ For a detailed analysis of the legal mandate of the commissions, see *International Commission of Jurists*, "Justice Denied: The 2014 Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act", May 2014, accessed at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/05/Nepal-TRC-Act-Briefing-Paper.pdf>.

⁶ OHCHR Technical Note: The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014), at URL http://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf.

⁷ See, for example, ICJ, 'Commissions of inquiry in Nepal: Denying remedies, entrenching impunity', June 2012, at URL <https://www.icj.org/nepal-toothless-commissions-of-inquiry-do-not-address-urgent-need-for-accountability-icj-report/>.

⁸ *Madhav Kumar Basnet v. the Government of Nepal*, Nepal Kanoon Patrika 2070 (BS) Issue 9 decision no. 9051.

perspectives on the Commissions' interaction and coordination with State authorities.

The discussion below summarizes the main issues raised by the participants of the meetings and do not necessarily represent the views of the ICJ.

A common overarching thread in all consultations was an acute sense of cynicism and distrust of the existing transitional justice process. Despite the checkered history of COIs in the country and the flawed mandates of the TRC and CoID, many participants reported that they were initially optimistic when the Commissions were established. Even the official registration of their complaints before the COIs, enabling their grievances to become part of the official government record, was considered an achievement. There was hope that if the Commissions worked independently and without prejudice, it would be possible to hold perpetrators to account and provide remedy and redress to victims. However, more than two years after the Commissions were established, these expectations have largely remained unfulfilled.

Lack of political will

The participants highlighted the lack of political will to bring perpetrators to justice as the major obstacle to addressing violations and abuses committed during the conflict.

The two sides of the armed conflict – the Government of Nepal and the Communist Party of Nepal (Maoist) – have both resisted accountability for conflict-era human rights violations and have refused to cooperate with investigations into any of their personnel. The Government has repeatedly failed to abide by court judgments, including those of the Supreme Court, posing serious threats to the integrity of the judiciary and public trust in the criminal justice system.⁹ High-level suspected perpetrators have even been promoted, rewarded with lucrative postings within the United Nations, and allowed to hold high office, including in Nepal's legislature and cabinet. The police, which lacks independence and is vulnerable to political interference, also often is unwilling to register First Information Reports (FIR), let alone effectively investigate, cases related to the conflict. In instances where police refuse to register FIRs or delay investigations, the only recourse for victims and their families has been to file a writ seeking court orders directing State authorities to act in accordance with the law. However, as participants observed, even court orders or directions are often not implemented.¹⁰

The lack of political will to hold perpetrators of human rights violations to account has shaped the slow pace and the dynamics of the transitional justice process in Nepal. Since the end of the conflict, there has been an ongoing debate about whether perpetrators of conflict-era violations

⁹ For a detailed analysis, see Frederick Rawski and Mandira Sharma, 'A comprehensive peace? International human rights monitoring in Nepal', in [Sebastian von Einsiedel \(ed\), *Nepal in Transition: From People's War to Fragile Peace* \(2012\).](#)

¹⁰ See, for example, ICJ and National Judicial Academy (NJA), Study Report on Execution Status of Supreme Court and Appellate Court Orders/ Judgments relating to Transitional Justice, December 2016.

should be prosecuted and held to account, or be granted amnesties, ostensibly for the purpose of “reconciliation”. Not surprisingly, victims and their families have sought the former, whereas nearly all major political parties and security forces have insisted on different kinds of amnesties, including blanket amnesties, claiming that all the alleged violations happened in the course of performing their duty.

Participants were of the opinion that the flawed TRC Act (including the option of referring cases for amnesty by the Commissions) and the Government’s continued resistance to amend the TRC Act in accordance with Supreme Court directions were also attempts to shield the perpetrators of conflict-era violations from accountability.

Lack of trust in transitional justice mechanisms

A number of participants also expressed a lack of trust in the Commissions due to the heavily politicalized process of their establishment and the appointment of the Commissioners. The Commissioners, according to them, have failed to adopt a victim-friendly approach to their mandate and have showed no interest in complying with international standards on transitional justice or jurisprudence established by the Supreme Court of Nepal. The participants stated that their decision to file complaints before the Commissions does not mean that they have placed any trust in them. Rather, they registered their cases so that at the minimum, their grievances would become a part of the official government record. Others said another motivation to register complaints before the Commissions was to assess how they were operating, a “test” that they believed the Commissions had failed.

As an interesting contrast, certain lawyers the ICJ met with during its consultations with other stakeholders told the ICJ that victims were growing more optimistic of getting justice in the regular criminal justice system because of Maina Sunuwar’s case, where a district court had convicted three former military officers for Maina Sunuwar’s murder.¹¹

¹¹ Maina Sunuwar was subjected to enforced disappearance, torture and unlawful killing in the course of and after a covert military operation on 17 February 2004. She was 15 years old at the time. Following national and international pressure, the military conducted an internal inquiry to investigate the circumstances of her death. Based on the inquiry, a court martial in September 2005 concluded that Maina Sunuwar died and was buried in a clandestine grave following prolonged torture by simulated drowning and electrocution on the day of her enforced disappearance at the Nepal Army’s Peacekeeping Training Barracks at Panchkhal. While the court martial in 2005 convicted three officers for failing to follow prescribed military procedures in Maina Sunuwar’s detention. It described her death by prolonged torture as ‘accidental’ and attributed it to the officers’ ‘carelessness’. The accused were sentenced to six months’ imprisonment, temporary suspension of promotions and a small monetary fine as ‘compensation’ to Maina Sunuwar’s family. In fact, they served no period of imprisonment as they were considered to have served their sentences by being consigned to barracks during the investigation. The report of the Military Court of Inquiry Board implicated a fourth person, then-Captain Niranjana Basnet, but decided not to refer him for prosecution. In a landmark ruling, the Supreme Court in September 2007 decided that the case should be dealt with in a civilian court. However, for many years the Nepali Army declined to cooperate with the police investigations and court proceedings that were initiated before the Kavre District Court. After a number of procedural and political hurdles stretching over years, the Kavre District Court on 16 April 2017 convicted the three retired army officers *in absentia* for Maina Sunuwar’s murder, a crime that carries a sentence of life imprisonment in Nepal. See International Commission

They also said that more victims were now approaching them to discuss how to file their cases before the police, suggesting some victims had more trust in the regular criminal justice system than transitional justice mechanisms ostensibly established to provide them justice.

Inadequate legislative framework

According to the participants, an inadequate legislative framework has compounded the weaknesses of Nepal's transitional justice process. As a starting point, the TRC Act remains un-amended despite the Supreme Court's rulings and concerns raised by victims, civil society groups, and national and international human rights organizations, including UN authorities. This failure has called into question the Government's political will to ensure victims' right to truth, justice and reparation, and has also rendered the transitional justice mechanisms legally and procedurally flawed and ineffective.

Participants also raised concern about the failure to establish in law criminal offences which would cover conduct amounting to serious human rights violations and abuses including torture and other ill treatment as well as enforced disappearances and war crimes. In 2007, the Nepali Supreme Court in *Rajendra Prasad Dhakal v. Government of Nepal* (2007) directed the Government to criminalize enforced disappearance in accordance with the UN International Convention for the Protection of All Persons from Enforced Disappearance; take action against officials found guilty of perpetrating enforced disappearances; and ensure that amnesties and pardons were not available to those suspected or found guilty of the crime.¹² The judgment was reiterated in *Madhav Kumar Basnet v. Government of Nepal* (2014).¹³ UN authorities, the UN Human Rights Committee and the UN Committee against Torture have also made calls on Nepal to criminalize acts involving gross human rights violations, including enforced disappearances and torture and other forms of ill-treatment. They have made clear that by failing to do so, Nepal is in breach of its international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, enforced disappearance and torture are still not criminal offenses under Nepali law.

Participants also expressed concern that even if the CoID makes recommendations for prosecution, the legal framework would be inadequate in the absence of a law criminalizing enforced disappearance and torture. While Nepal has draft legislation criminalizing enforced disappearance as well as torture and other ill-treatment, these bills in their current form are not fully compliant with Nepal's international legal obligations.

of Jurists, 'Nepal: need effective steps to enforce court verdicts', 20 April 2017, at: <https://www.icj.org/nepal-need-effective-steps-to-enforce-court-verdicts/>.

¹² See, *Rajendra Prasad Dhakal and Others v. the Government of Nepal and Others*, Nepal Kanoon Patrika 2064(BS), Issue 2 decision no 7817.

¹³ *Madhav Kumar Basnet and others v. the Government of Nepal*, Nepal Kanoon Patrika, 2070 (BS) Issue 9, decision no. 9051.

A draft bill on the Criminal Code, for example, proposes to criminalize enforced disappearance. ICJ's analysis shows that the proposed definition falls far short of Nepal's international obligations and the Convention on the Protection of All Persons from Enforced Disappearance (CED). The definition inadequately addresses superior command responsibility for cases of enforced disappearances; it does not expressly make the prohibition against enforced disappearance absolute; and the provisions on the penalty for enforced disappearance are inconsistent with international standards.¹⁴

ICJ's analysis of the Torture and Cruel, Inhuman or Degrading Treatment (Control) Bill, 2014, also shows a number of shortcomings: the definition and scope of torture and other ill-treatment in the Bill fall short of requirements under CAT and other international standards; the Bill sets in place a limitation period for filing complaints; it provides disproportionately low penalties for perpetrators; and it fails to provide access to effective remedies and reparation for victims.¹⁵

In addition, participants raised serious concern about the unacceptably short statutes of limitation under Nepali law for serious crimes such as rape, which is a form of torture and which can lead to impunity in conflict-era cases of sexual violence. Under international standards, violations consisting of crimes under international law generally should not be subjected to statutes of limitations.

Participants felt it was important to work with the Parliament as well as other stakeholders to ensure strong, robust legislation, and that this would be an important step towards accountability for conflict-era violations and abuses.

Lack of confidentiality and security

Many participants, particularly victims, spoke about the lack of confidentiality in the transitional justice process and the security threats for those who engaged with the Commissions and registered complaints. There are no provisions addressing victim and witness protection in the TRC Act, which compounds the problem of insecurity, as there are few avenues for redress for victims and witnesses that are subject to threats, intimidation, persecution or other attacks. Many victims expressed fear and insecurity after submitting complaints and giving testimony or other evidence to the Commissions, and urged human rights organizations to start thinking about mechanisms through which witnesses and their families, as well as the confidentiality of the documents they have submitted to the Commissions, could be protected after the dissolution of the Commissions. A number of victims suggested that the National Human Rights Commission (NHRC) could be approached for this purpose. Participants also encouraged the human rights community to closely

¹⁴ *International Commission of Jurists*, "Serious Crimes in Nepal's Criminal Code Bill, 2014", March 2017, accessed at: <https://www.icj.org/wp-content/uploads/2017/03/Nepal-Serious-Crimes-Bill-Advocacy-Analysis-Brief-2017-ENG.pdf>.

¹⁵ For details see *International Commission of Jurists*, "The Torture and Cruel, Inhuman or Degrading Treatment (Control) Bill 2014: a briefing paper", June 2016, accessed at: <https://www.icj.org/wp-content/uploads/2016/06/Nepal-Torture-Bill-Advocacy-Analysis-Brief-2016-ENG.pdf>.

monitor the work of the Commissions and follow-up on any security issues that arise after registration of complaints or during investigations.

Lack of adequate resources

Participants were also of the opinion that inadequate resources – human, financial and technical - were major obstacles preventing the Commissions from performing their work effectively and efficiently. They questioned how cases in the tens of thousands that were received by the Commissions could be investigated by a small staff and without resources and other tools to do their work? Many of them saw this as evidence that the Government was not committed to accountability for conflict-era violations and abuses.

Lack of coordination

Participants expressed concern that even with only seven months left before the Commissions' mandates expire, they have not made progress in improving coordination with the State institutions required to assist them in their work, or with victims and human rights organizations. A large number of human rights violations and abuses during the conflict were documented by various organizations.¹⁶ However, due to lack of coordination and victim-friendly mechanisms to ensure confidentiality of their information, human rights organizations have been reluctant to approach the Commissions to share their data, leaving the Commissions' records incomplete.

ICJ's consultations with other stakeholders also showed a lack of coordination between district level local peace committees, which were assigned to collect complaints of human rights violations and submit them to the COIs; the Nepal police, which is required to investigate the complaints; and the Attorney General's office, which has the legal duty to initiate prosecutions based on investigations that reveal a case to answer.

The Secretary of the Local Peace Committee (LPC) in Bardiya district, for example, said to the ICJ that he had no information on the progress of the hundreds of cases submitted to the COIs from the district. He expressed concern that victims who had registered complaints before the Commissions through the LPC frequently visited the LPC office to inquire about the progress on their cases, but he had no choice but to suggest that victims contact the Commissions directly, as the Commissions did not promptly respond to requests for follow-up on registered cases. The police in Bardiya district also confirmed that the COIs had thus far referred no case of human rights violations for investigation to the police.

Similarly, officials of the National Human Rights Commission informed the ICJ that they still had not received any requests for information from the Commissions related to the cases of conflict-era human rights violations filed before the NHRC. Like the LPC, they expressed concern that victims regularly contacted NHRC offices to inquire about cases filed before the

¹⁶ For example: National Human Rights Commission (NHRC), Informal Sector Service Center, Advocacy Forum, and UN Office of the High Commissioner for Human Rights.

Commissions but since the NHRC had no information, they also had refer the victims to the Commissions.

Surprisingly, ICJ's meeting with certain judges showed that they too were unaware about recent developments in the transitional justice process or any updates on progress of the Commissions. All they seemed to know was that two Commissions had been established to resolve conflict-era cases of human rights violations and they were still working on investigating the complaints.

Failure to adopt a consultative and transparent approach

Participants in all consultations said that the Commissions had failed to adopt a consultative, victim-centric approach in their work despite Supreme Court directions that transitional justice processes must be transparent and consultative. Participants also pointed out that the selection of the Commissioners for both the TRC and the CoID had been carried out in a non-transparent manner without any consultation with victims and human rights groups.

Members of the Commissions have publicly claimed they have been in close consultation with conflict victims. However, a majority of participants said that they never been consulted and were unaware about the Commissions' work because of their secret and non-transparent working methods and procedures.

The Secretary of the Local Peace Committee in Bardiya confirmed these concerns. He explained to the ICJ that the opacity of the working methods of the Commissions was making victims frustrated with the transitional justice process. Not only were they losing hope of ever getting justice, but victims also felt that their experience with the Commissions was deepening their anguish and further victimizing them.

4. Strategies to overcome challenges

The consultations also focused on identifying strategies for civil society organizations and victims' groups to address the challenges facing Nepal's transitional justice process. The strategies and recommendations summarized below do not necessarily represent the views of the ICJ.

It was discussed that there was a need for a two-pronged strategy. The first is aimed at addressing the problems for the duration of the mandate of the Commissions, even if it is expanded for additional terms; and the second for when the Commissions' mandate expires.

During the mandate of the Commissions

Most of the participants were of the opinion that it was very likely that the Government would extend the Commissions' terms for at least another year after their mandate expires in February 2018. The following strategies and recommendations were discussed for the duration of their terms, even if they are extended:

Government of Nepal and Commissions of Inquiry

- a. Amend the TRC Act 2014 in line with Nepal's international legal obligations and jurisprudence established by the Supreme Court of Nepal;
- b. Make public any proposals for amendments to the TRC Act and guarantee a broad-based consultation on the draft to ensure conflict victims are involved the transitional justice process;
- c. Formulate domestic legislation criminalizing serious crimes including torture and other ill-treatment and enforced disappearance, as well as other serious crimes under international law, including war crimes and crimes against humanity in conformity with international standards and with retroactive effect and without any limitation period for filing conflict-era human rights violation cases; and
- d. Provide sufficient resources, both human and financial, to the Commissions to enable them to perform their duty fairly and effectively.

Commissions of Inquiry

- a. Take fully into account the expressed needs of the victims and make gaining the confidence of stakeholders, particularly victims, a top priority;
- b. Ensure all complaints received are investigated promptly, independently, impartially and thoroughly;
- c. Ensure victims and other witnesses have adequate security and their evidence is kept confidential;
- d. While protecting confidential information, ensure all procedures of the Commissions are transparent and updates on complaints received by the Commissions are regularly made public; and
- e. Improve coordination with State authorities as well as with victims and human rights organizations.

Civil society organizations

- a. Prioritize consistent and strong advocacy initiatives towards the Parliament and executive to amend the flawed TRC Act in line with Supreme Court rulings;
- b. Monitor the work of the Commissions and promptly respond through press releases and other media advocacy where necessary;
- c. Ensure frequent interaction between civil society organizations, conflict victims, the international community, and the Government to keep the issue of transitional justice a priority;
- d. Monitor the work of the TRC and CoID more effectively and intervene where they are working contrary to established jurisprudence, international law and standards, and victims' right to an effective remedy and reparation. The monitoring of the Commissions' work should be disseminated to victims regularly;
- e. Consider pursuing strategic litigation in courts to ensure that the Commissions fulfill their mandates;
- f. Work in a coordinated manner and build a common network to raise a collective and uniform voice on transitional justice issues; and
- g. Work towards strengthening the unity of conflict victims to build a common understanding and focus on enhancing their leadership.

Beyond the Commissions' life

A majority of participants agreed that there is an urgent need to build alternative strategies to achieve appropriate and necessary transitional justice goals, as it was very likely that the Commissions would fail to fulfill their mandates. It was agreed that these strategies needed to protect victims, as there is a possibility that the information submitted to the Commissions could be misused after their mandate expires.

Government of Nepal

- a. In consultation with civil society organizations and victim's groups, explore the possibility of handing over all the cases filed before the TRC and CoID to the National Human Rights Commission (NHRC) after the expiry of their mandates to protect the evidence and to prevent the victims and their family from possible security threats arising from the misuse of the evidence submitted before the Commissions; and
- b. Assess the possibility of bringing the cases of conflict-era violations and abuses into the ordinary justice system and consider other options, including referring them to the National Human Rights Commission as well as explore the feasibility and desirability for the establishment of an ad hoc criminal tribunal if the TRC and CoID fail to ensure criminal accountability.

Civil Society Organizations

Legislation/ legal reform

- a. Continue legal, political and judicial advocacy initiatives to amend the TRC Act;
- b. Continue advocacy to formulate legislation criminalizing serious human rights violations including torture, enforced disappearance, war crimes and crimes against humanity;
- c. Advocate to amend the statute of limitation to file rape cases; and
- d. Advocate to adopt legislation and other mechanisms for victim and witness protection.

Capacity-building

- a. Hold trainings and workshops with the NHRC, courts and other state institutions such as the prosecutors and the police to enhance their capacity to handle cases of human rights violations and abuses more effectively.

Litigation

- a. Continue providing assistance for litigation;
- b. Initiate filing cases in the regular justice system so as to seek domestic remedies for human rights violations and abuses; and
- c. Provide assistance to bring conflict-era cases before international mechanisms including the UN Human Rights Committee, the UN Human Rights Council, UN special procedures and the Universal Periodic Review.

Advocacy/ lobbying/ interaction

- a. Organize a national conference of human rights organizations, civil society groups, conflict victims and donor agencies to discuss the

- current context and build strategies beyond the Commissions' mandate;
- b. Conduct regular meetings, interactions and sensitization programs with leaders of political parties and other stakeholders;
 - c. Convene regular meetings among civil society groups, human rights organizations and conflict victims to discuss current issues and adopt immediate action points to respond;
 - d. Engage in various kinds of advocacy, including maximum use of media, to raise issues on new developments related to transitional justice; and
 - e. Increase awareness activities with victims to keep them updated about current developments as well as encouraging their engagement in activities related to transitional justice.

Campaigns

- a. Create a loose forum of civil society groups, human rights organizations and conflict victims to raise their voice collectively and more effectively; and
- b. Organize a national conference of CSOs, conflict victims, and donor agencies to discuss and build future strategies on transitional justice issues of Nepal.

Advocacy at the international level

- a. Raise the issue of transitional justice at international forums including the UN Human Rights Council, UN special procedures and UN treaty bodies, as well as with international organizations, the international community and donors in Nepal.

Conflict victims activities

- a. Focus on leadership development, with assistance from human rights organizations and the international community;
- b. Increase awareness on human rights, including the right to information, and transitional justice issues;
- c. Prepare a paper listing their concerns and demands and submit a memorandum to different State agencies with victims' demands and expectations; and
- d. Organize nationwide public protests and demonstrations to create pressure on the Government to fulfill their key demands.

5. Conclusion

Many of Nepal's human rights civil society organizations have done well to keep accountability for human rights violations on the national and international agenda for more than a decade since the end of the conflict. However, there are now visible signs of cynicism and frustration with the transitional justice process, and victims, in particular, are losing hope in ever achieving justice. At this critical juncture, victims are seeking assistance from human rights organizations and civil society groups, and are looking towards them for support to raise their concerns in order to ensure their right to truth, justice, remedy and reparations.

With dwindling donor interest in transitional justice and accountability for human rights violations, human rights organizations and victims' groups

are concerned about the sustainability of working on addressing impunity for human rights violations. However, they consider it imperative for civil society organizations and victims' groups to continue to work together and once again reanimate the human rights movement in the country.

Based on the discussions during the consultations, the ICJ intends to develop its strategies to work with Nepali victims' groups, civil society groups and human rights organizations to address and overcome the barriers identified. The observations and recommendations from the discussions will also serve to further inform the ICJ's own positions and its ongoing advocacy and capacity-building initiatives focusing on longer-term criminal justice system reform, as well as in its domestic and international advocacy efforts towards promoting the rule of law, the fair administration of justice, and greater justice and accountability for conflict-era human rights violations and abuses in Nepal.

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