

Nepal: After a decade, still time to provide justice

Ten years after the Comprehensive Peace Accord (CPA) ended Nepal's bloody civil war, Nepali authorities must renew their commitment to ensure truth, justice and reparation for victims of the conflict who are still waiting for redress, the International Commission of Jurists (ICJ) said today.

The CPA, signed by the Government of Nepal and the country's major political parties, including the then Communist Party of Nepal (Maoist) on 21 November 2006, called for a credible transitional justice process that would ensure victims' rights to truth, justice, reparation and effective remedy in accordance with Nepal's international human rights obligations.

"The hope and promise to conflict victims towards fulfillment of their rights to truth, justice and reparation that came with the signing of the CPA and the end of the conflict ten years ago have yet to be realized," said Sam Zarifi, ICJ Asia director.

"Over the last ten years, various governments from all the different parties have blocked or hindered the transitional justice process, ignoring rulings by the Supreme Court that demanded compliance with international law and standards."

The Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Disappeared Commission (CoID), established on 11 February 2015 by the "*Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014*" (TRC Act), have thus far failed to carry out their respective mandates in a credible manner through a transparent, victim-centric consultative process¹. After commencing their operations more than 21 months into their two- year mandate, the TRC and COID are yet to begin investigations of specific cases, even as only three months remain on their mandate.

The TRC Act is a deeply flawed enabling statute as the Nepal Supreme Court itself in its February 2015 ruling struck down key provisions as unconstitutional and in contravention of Nepal's international human rights obligations.²

In particular, the Nepal Supreme Court held that the TRC Act's provisions allowing for the possibility of amnesty for gross human rights violations and serious violations of international humanitarian law, as well as those allowing for reconciliation without victims' consent, were in violation of international law.

¹ *NIRUPAN*, July 2016, A monitoring report of the Center for Legal Studies (CLS), http://clsnepal.org/publication_detail.php?id=3

² <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/05/Nepal-TRC-Act-Briefing-Paper.pdf>

To date, the Nepal authorities have taken no action to implement the Court's judgment and rectify the flawed process.

While the government of Nepal has very recently started closed-door discussions on amendments of the TRC Act, the process remains lacking in transparency and adequate consultation with victims or civil society.

"The opacity with which the Nepal authorities seem to be proceeding with amendments to the TRC raise serious concerns as to whether these amendments will be more or less in compliance with the Supreme Court and international law," said Zarifi.

The Government of Nepal has similarly recently undertaken drafting of a special court bill to establish a special judicial mechanism to try for conflict-era crimes through prosecution of alleged perpetrators. The concerns remain whether the proposed court would be set up to ensure accountability and end impunity in Nepal. At the same time, however, the process remains opaque and lacks consultation with stakeholders.

"The Nepal government has an opportunity on the occasion of the 10 year anniversary of the CPA to alleviate victims' severe distrust of the process by reaffirming its stated commitment to victims' rights through a credible, transparent and victim-centred transitional justice process," Zarifi added.

The ICJ takes note that the Government of Nepal is drafting an amendment bill to the TRC Act, hence, calls on the Government of Nepal to fully implement its obligations under international human right law, particularly fulfill its commitment enshrined in the CPA and Interim Constitution to:

- Ensure that all relevant stakeholders are consulted while drafting the amendment bill to the TRC Act and a new Bill on Special Court.
- Amend the TRC Act 2014 in compliance with the 2 January 2014 and 26 February 2015 as well as previous jurisprudence of the Supreme Court and in compliance with international law and standards, including:
- Amend Section 3 and 13 so that the power, function and mandate of the two separate transitional justice mechanisms - 'Truth and Reconciliation Commission' and 'Commission of Inquiry on Disappeared Persons' - are defined in a clear manner that is consonant with international law and standards;
- Amend Section 10 to ensure that an independent Commission is empowered to appoint its Secretary and other staff members without interference or undue influence by the Government;
- Amend section 12 to ensure the Commission is independent of the Government in the allocation of its financing and resources and is able to seek funding from outside sources;
- Remove statute of limitation on prosecution of crimes under international law, including rape and other sexual violence and enforced disappearance;

- Fully implement the relevant recommendations issued on 15 April 2014 by the UN Human Rights Committee pursuant to its review of Nepal's compliance with its obligations under the International Covenant on Civil and Political Rights; and
- Amend section 22 to provide that any reconciliation between victims and alleged perpetrators must take place only with the informed and voluntary consent of the victim;
- Amend section 25.2(a) to enable the Commission to recommend investigation and prosecution, where required in accordance with Nepal's obligations under international law, even in those cases that have been mediated;
- Implement fully the Supreme Court judgments in *Rajendra Dakal v. the Government of Nepal*, *Liladhar Bhandari v. the Government of Nepal* and *Madhav Kumar Basnet v. the Government of Nepal*;
- Prohibit amnesty for crimes under international law, gross human rights violations or serious violation of international humanitarian law;
- Enact domestic legislation criminalizing serious crimes under international law, including enforced disappearance, torture and ill-treatment, war crimes, crimes against humanity, in accordance with international law and standards;
- Adhere to the principles of judicial independence and other international human rights law and standards while establishing the special court to prosecute cases of conflict era human rights violations and abuses;
- Ensure a gender-sensitive environment in all transitional justice mechanisms by making special provision to deal with victims of gender based violence during the conflict, as well as to ensure the particular needs of women, children and disadvantaged and marginalized groups;
- Establish necessary legal, administrative and, institutional arrangements for effective reparations; and
- Establish effective victim and witness protection mechanisms.
- Amend TRC Act allowing Commissions to make recommendations in relation to guarantees of non-recurrence, including by prohibiting those accused and/or convicted of crimes and serious human rights violations from holding public office.
- Ensure right to effective remedy for the victim including right to reparation.

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