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Pursuing Truth, Justice, and Redress in Nepal:

An Update on the Transitional Justice Process

Over a decade since the end of conflict in Nepal, the International Center for Transitional Justice (ICTJ) continues to support victims in their demands for justice, acknowledgement, reparations, and reform. Although the Government of Nepal has established two commissions to advance these rights—the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP)—to date, neither commission is close to fulfilling its mandate, although both have been operating for about three years.

Victims’ longstanding needs for truth, justice, and reparations remain unmet. The cost of the commissions’ ineffectiveness when measured by the continued suffering of victims and their diminished trust in government is enormous.

Victims of sexual and gender-based violence and female relatives of the disappeared continue to suffer from the severe physical and mental injuries they sustained during the war; many are ostracized because of the crimes they suffered. Often rejected by their communities and family, many are particularly vulnerable to food scarcity and reduced life expectancy.

Their families, especially children, face daily hardships and discrimination as well, including social stigma, reduced educational opportunities and limited earning capacity. Although some victims received some interim relief from the Ministry of Peace and Reconstruction (MOPR), that assistance was limited and temporary; many victims were found ineligible or, namely the sexual violence and torture victims, were unable to participate in that program.

Despite victims’ urgent needs, operations at the commissions continue to proceed at a very slow pace. Over the past three years, the two commissions have received around 64,000 complaints from victims of human rights violations committed during the conflict. Yet so far, neither commission has made much progress investigating and responding to the complaints.

The frustration at the lack of progress is palpable in ICTJ’s work with victims — “As of now, nothing has been done to locate the missing. If our animals are missing we go looking for them. But nothing is done for human beings. We need help learning the status of our husbands. If he has been killed. We should know the truth of his status.”¹

This briefing paper contains a summary of the discussions and concerns highlighted by stakeholders during ICTJ’s fieldwork and analysis of recent transitional justice developments in Nepal.

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¹ Unless otherwise attributed, this and other statements were made by participants at workshops held by ICTJ in November 2017. To protect the identity of the speaker, no attribution is provided. Notes of the meetings are on file at ICTJ.

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Commissions' Investigation and Statement Taking Processes

"The commissions made many promises, but nothing has happened."

During recent workshops with women victims and coordination and strategy meetings with human rights groups,² ICTJ could confirm that there is a significant level of victim engagement with the commissions. Of the ninety women who participated in workshops, for instance, only two reported not registering a complaint with one of the two commissions.

Generally, however, victims' experiences with the commissions have not been positive. Those living for instance near the TRC's provincial office in Dang in Province 5 reported that although the TRC office is formally 'open,' it is not truly functioning. Many in Kanchanpur were not even aware that a provisional office had been established. Most expressed frustrations with the slow pace of progress. One described the state as "deaf." Another said public officials talk and talk, but "they do not listen to our voices."

"They asked what date we were tortured, but didn't sit with us to hear our stories."

Statement takers working on behalf of both commissions appear to have little or no training. Instead, the method for taking a statement appears largely dependent on the attitude of the statement taker. Although experiences among victims who have been interviewed vary, there were many commonalities.

Most victims described the statement taking process as perfunctory. The interviewers ask a few questions, take notes, and fill out the form. Although one person reported seeing a form with about 24 questions, he said that victims in reality are being asked to answer about three or four questions that seek a few details about what happened to them during the conflict – e.g. a description of the violation, information about the perpetrators, and documentation or evidence showing that the violation occurred – but little else.

One participant reported that he observed an interview where the victims were asked three questions: 1) Was your son taken by the Army or Maoists? 2) Was it during the day or at night? and 3) Was your son a Maoist cadre or was he carrying guns on behalf of the Maoist party? In another case, where Maoists had looted property from the victim, the statement takers asked the victim only two questions: 1) Did you get your property back? and 2) Did you receive compensation?"

Most reported that victims were not asked about their needs or current situation (for example, how many children they have and whether they are making ends meet). A few, however, were asked how they were feeling and what kinds of reparations they wanted.

If a victim is not capable of understanding the process, rather than providing them with support, statement takers have skipped questions or filled in answers on their own. In some instances, statement takers are merely duplicating claims made by other victims when filling out statements. Particularly troubling were reports that some statement takers are taking statements from groups of 4-5 victims, rather than individually, as is required. There was one report that victims were asked to sign a blank sheet of paper or a document acknowledging that their case was complete when that is far from the truth.

² Three two-day workshops were held outside Kathmandu in Nepalgunj and Mahendranagar, Nepal. Ninety women victims participated from the Banke, Kanchanpur, Bardiya, Surkhet, Dailekh and Kailali districts. The first and last workshop included victims of both sexual and gender-based violence and female relatives of the disappeared. Detailed findings from the workshops have been compiled and published in Nepali and in English as part of a series of newsletters being circulated among relevant stakeholders in and outside Nepal. See link here: <http://mailchi.mp/3d86c97d1d90/gender-newsletter>.

Three coordination meetings were organized with civil society, victims' organizations, and national human rights organizations to facilitate communication and coordination among the human rights community and to provide advice and to support their advocacy efforts and activities. Two meetings were held in the west of Nepal: the first in Nepalgunj on November 6th; the second in Kanchanpur on November 9th. A third meeting was held with the CVCP in Kathmandu on November 11th. Participants included representatives from CVCP, Advocacy Forum, the Collective Campaign for Peace (COCAP), Human Rights Organization for Nepal (HURON), the NGO Federation, the National Human Rights Commission, INSEC, the Fatima Foundation Nepal, JuRI-Nepal, CVSJ, Woman Human Rights Defenders (WHRD), and the media, both television and print.

The protocol dictating that women statement takers must be made available for women victims wishing to give their statements to another woman is apparently not being followed. A number of women reported that statement takers behave arrogantly during victim interviews. As such, the entire environment is uncomfortable for them. Psychosupport counselors are not available to console victims if they are upset. Worse, a few women victims reported being harassed by the staff when visiting offices. One woman noted: “When we go to the offices the male officers seemed to be supportive, ask for our phone numbers, and then call and flirt.”

Victims at the workshops were particularly troubled by the commissions’ insistence on documentation or evidence of the violation they suffered, something few possess either because it never existed, was destroyed or lost, sometimes during the conflict, or had already been provided to an agency of the government and not returned.

“We should be considered victims. What we say should be considered evidence. Did I get raped? I know myself what happened. Our statements should be evidence. Rape is not excused just because it was war.”

In addition, although some said that they felt that victim confidentiality is by and large being protected, victims are not receiving receipts for documents. Instead, the only record of the complaint is a listing in a registration book.

On a positive note, a number of victims did report receiving help filling out the complaint form and reported that the commissions followed-up with many of them afterwards. However, those communications appear to have been primarily bureaucratic. One participant, for instance, received a phone call, but the caller merely asked if she had “lodged a complaint.”

A number of those participating in the workshops in both Kanchanpur and Nepalgunj reported that the CIEDP sent a letter to each victim who had filed a complaint, but that the letter asked merely for additional evidence of the violation. Many of the victims wrote back to the commission, but have so far received nothing in response, although a few reported that the commission texted a message to their mobile phones to thank them for responding.

The findings and discussions with victims confirm that the TRC is taking a very legalistic approach favoring investigation into individual cases rather than truth seeking. Statement takers do not appear to be seeking to understand the broader political implications of individual killings or disappearances or how they fit into the overall dynamics of the conflict or whether there are patterns in the violations that can help establish either the widespread and systematic nature of the violations or the responsibility of particular actors. Rather, the approach appears designed to elicit case-by-case determinations without meeting any of the evidentiary requirements that would be necessary to press charges in individual cases. The only result appears to be the frustration of the truth seeking mandate and, in large part, a retraumatization of victims.

Obstacles to Accessing Justice Expressed by Women Victims

The women participants of the abovementioned workshops noted several distinct challenges and obstacles to accessing truth and justice in Nepal, a number related to the operating commissions, but also more broadly. In eliciting their experiences and views, for example, participants were encouraged to consider not only the challenges they are confronting when pursuing redress and justice, for instance at the TRC and CIEDP, but also difficulties they confront in their daily lives related to their victimization, such as when seeking health care and psychosocial support; gaining control, ownership over, or access to land or property; accessing education, including registering children at school; and for obtaining necessary documentation.

For Nepal’s many conflict victims, the conflict and the human rights violations they endured have had and continue to have effects far beyond the immediate harms they suffered. The long-term consequences of that violence and trauma have affected all aspects of their lives and the

lives of their families, often in ways not well understood by others or that cannot be addressed by existing assistance programs or laws. Victims are owed a comprehensive approach that offers reparative benefits to address their physical and psychological harms, as well as the disruptions in income, education, and socialization that the violations and the conflict caused.

The workshop participants detailed the many hardships they continue to face—

Stigma and shame remain an overarching challenge that prevents many victims from coming forward and speaking about their experiences. This is especially true for victims of sexual violence; special attention should be given to ensure a safe space for them to speak and voice their opinions and demands.

The failure on the part of the government to provide a means for verifying victim status and eligibility for benefits is preventing victims from getting the help they need. This is relevant for all victims, but was a particularly salient point made by women who cited this as a continual obstacle affecting many aspects of their lives and as such a source of great distress. As of now, in the absence of a reparations program or other measures that ensure victims' benefits, victims are being left to seek treatment for physical and psychological conditions caused by conflict violations on their own and without recognition that their status as victims should entitle them to specialized health or other benefits.

Many women, especially wives of the disappeared, are facing practical issues when trying to transfer or establish ownership of property or apply for social welfare assistance and pensions, for example. One extended discussion among women victims focused on differences between accessing, controlling, and owning land. Victims emphasized that they may have use of land, but not control over it; or they may have a legal right to land, but their access to and control over the property is not granted in practice. Women may not be able to sell property even if it is in their name without first getting approval from a male family member. As such, despite changes in the constitution and law, women have not necessarily benefitted in practice. A participant in the second workshop in Nepalgunj for instance said that after her husband was killed, her husband's brother went to the VDC to transfer the property into his name. When she protested, the official asked, "How do we know you are the wife of a deceased?"

Victims also reported experiencing significant communications, logistical, and bureaucratic obstacles in the operations of government that prevent them from seeking and getting assistance. These include hardships such as lack of sufficient funds to travel to government offices to file required paperwork; lack of awareness about certain benefits and programs for victims; and difficulty securing required "recommendations" (i.e. final sign offs) at the local level. Some women reported having been taken advantage of and asked to pay for services that are supposed to be free. Others reported that a lack of communication and basic recordkeeping within and between various governmental bodies makes it difficult or impossible to access benefits.

"There is frequent changeover in government officials. If someone is there regularly you get benefits; but the next day someone new arrives and you are turned away. That is why we need an identity card."

This was particularly frustrating given that victims had already submitted documentation during the earlier Interim Relief Program (IRP). That information was not shared among the responsible offices and recorded in a searchable way. Victims who received help under that program must re-submit all documentation again, not only to the commissions, but also at the local level when seeking critical care and other immediate needs.

These challenges would best be addressed within the context of a comprehensive reparations program that addresses the full spectrum of victim needs and that also takes into account these and other real world obstacles that victims and in particular women victims are facing now when seeking help and could face in the future if and when measures of redress are eventually implemented.

In the meantime, the Nepali government should make use of the IRP's registry which was developed by a Task Force led by the MoPR between 2008 and 2012. The MoPR has since worked with different state ministries at the central and local level in identifying and delivering benefits to victims identified under that program, such as funds for scholarships and reimbursements for health care expenses. Representatives of the Conflict Victims Common Platform (CVCP) agree that the confirmation of a victim's status should be the responsibility of the state agency mandated to deliver the benefit or provide the service.

That victims' registry could be expanded to include the large number of victims who were not covered by the IRP or could not access that program. That expansion could be based at least preliminarily on the data collected by the two commissions and validated against the IRP database. ICTJ remains convinced that eventually a needs assessment should be conducted prior to designing a reparations program to determine, among others, the typologies of measures needed to address individual and collective needs. Such an assessment would help to ensure that all victims who are eligible qualify.

While the collection of relevant victims' data and the comparison with the IRP registry is not a complex endeavor, the two commissions have hardly moved forward on these steps. Not only are the commissions hampered by the lack of basic resources to accomplish such a database-building task, even if they had information technology management and database-building capacity, they have little to no experience and knowledge on how to handle human rights violations data and needs-assessments that are usually developed within the context of donor assistance programs and transitional justice processes.

It remains highly unlikely that without significant donor assistance the two commissions will be in a position to fulfill those tasks that are essential in designing a meaningful reparations program.³ In addition, care will need to be taken to avoid causing dissent among victims regarding who and when they should receive the identification card,⁴ or to undermine the main purpose of reparative measures, i.e. recognition of the wrongdoing suffered by the victims. In recent consultations organized by CVCP in January 2018, for instance, victims raised questions about who would receive ID cards and whether the family of a victim is entitled only to one such card despite different family members having different needs. Looking at comparative experiences, Tunisia opted for issuing ID cards to several members of the same family for them to access different services like free transportation or health care while certain benefits – such as public-sector employment is limited to one beneficiary.

In other countries, rather than an ID card, the government offered training in the use of banking services along with a bank account document to empower specific types of beneficiaries, namely spouses of a disappeared person – to make informed decisions regarding funds meant to support dependents.

Whatever measures are ultimately adopted, they should encompass a registry, memorials and other initiatives that recognize the victims, including those who died or are disappeared, to provide an effective and far less divisive acknowledgment of all victims even when actual benefits are limited by available resources. These acts of symbolic reparations should be formal and solemn events and should include a public acknowledgement from a government official that human rights violations were committed in the past and that they caused serious and often irreparable harm to victims. Statements of public apology or other public requests for forgiveness, (whether delivered in writing or orally) either by the state, heads of the armed forces, armed groups, or individual perpetrators, may be acts of symbolic reparation.

³ Forms of Justice A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations, Ruben Carranza, Cristián Correa, and Elena Naughton, ICTJ, November 2017, at <https://www.ictj.org/publication/forms-justice-designing-reparations-forms-and-processes>. According to Equal Access Nepal (meeting held on November 1, 2017), the TRC remains polarized and, despite setting up 7 provincial offices, not much progress has been made on investigations. They have succeeded in creating a database which could be characterized as being "well-done," although the representative with whom we spoke did not know whether the data could be aggregated or disaggregated by different factors.

⁴ The issuance of identification cards led in the past to litigation. See: <https://thehimalayantimes.com/kathmandu/replace-peoples-war-with-armed-conflict-sc/>

On Extending the Tenure of the Commissions and Advancing Victims' Rights to Truth, Justice, and Redress

On 5 January 2018, the Government of Nepal announced that it would be extending the terms of both the Truth and Reconciliation Commission and the Commission for the Investigation of Enforced Disappeared Persons, most likely for one additional year. At the time of publication, it appears that this extension may not necessarily include additional amendments to the TRC Act that have long been sought by national and international actors that would eliminate for instance the possibility of amnesties for gross human rights violations.

This is concerning as it risks solidifying impunity in Nepal. However, because it was apparent since their establishment that these commissions were never intended to fully overcome impunity for the most serious crimes committed during the conflict,⁵ they should still be able to fulfill some essential aspects of their mandate such as truth seeking, which in turn can inform recommendations on reparation programs and an explicit aim for 'reconciliation.'

Considering that the commissions are the only realistic avenue of redress for most victims, ICTJ remains of the opinion that it is more responsible to assist the commissions, despite their questionable mandate. Throughout, ICTJ has adopted an approach of "critical engagement:" continuing to engage with the commissions, in keeping with 'do no harm' principles, to ensure international standards for protecting victims are respected, while pointing out flaws in commission processes and calling for amendments to the TRC Act in accordance with the Supreme Court's 2015 verdict.

To our knowledge, ICTJ is among the few international organizations that provided targeted technical assistance to the two commissions. Specifically, between 2015 and 2016, ICTJ and the Peruvian Anthropological Forensic Team (Equipo Peruano de Antropología Forense, EPAF⁶) conducted a robust capacity development program for the CIEDP staff focused on ante-mortem data collection. However the results of that project were frustrated by the high turnover of CIEDP staff. Of the original 90 staff positions requested by the CIEDP, only 40 were funded by the state. Of the 40, 35 staff participated in the training.

Since then, however, 20 of the original 35 staff have moved on to other public offices. As a result, the program suffered significant delays and difficulties in developing the CIEDP database in Nepali and implementing an antemortem collection pilot phase. To this date, it remains unclear what other ante-mortem data has been collected by the commission beyond the pilot phase conducted with our support.⁷

Going forward, efforts and support should be directed, for the TRC at producing a truthful account of what happened during the conflict and its root causes⁸ and for the CIEDP to begin locating burial sites and finding the disappeared. Furthermore, the collection, registration, and analysis of the data collected from victims should be given the utmost attention and support in order to enable the commissions to recommend reparations.

This approach would not be unprecedented either in Nepal or elsewhere. The IRP was established and implemented at a time when the the establishment of a truth commission and

5 The legislation establishing the commissions was the subject of many national and international criticisms, and eventually its provisions relating to amnesty for persons who committed serious human rights abuses were struck down by Nepal's Supreme Court. S.Ct. Ruling, Writ (No. 070-WS-0050) of Certiorari & Mandamus, Suman Adhikari v. Nepal Government & Others (February 26, 2015); see also, OHCHR, Technical Note: The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) – as Gazetted 21 May 2014; Informal Sector Service Centre, "INSEC Annual Report 2014" (2014).

6 <http://epafperu.org/>

7 In 2017, the CIEDP established a multi-agency forensic investigation committee that includes public officials, academic personnel with forensic investigation backgrounds, and a representative of the National Network of the Families of the Disappeared and Missing (NEFAD). We understand, however, that the committee has not met. It would not – in any event – be able to operate given the lack of ante-mortem data. It appears that this committee has the potential to advance the most important part of the CIEDP mandate, i.e. knowing what happened to the disappeared. However, this would be dependant on the level of specialized support and funding that the committee and the CIEDP receive. Typically, these operations are made possible with significant donor funding.

8 Section 27(f) of the TRC Act requires the commission to analyze the root causes of the conflict in its report.

legislation on amnesty for violations committed during the conflict was already being debated.⁹ Yet the IRP was implemented, through the significant funding (USD 23 million) provided by the World Bank. This demonstrated that some of the victims' needs can still be met while the political issue of amnesties remains outstanding.¹⁰

The extension, therefore, provides an opportunity for addressing the many still unfulfilled objectives and functions of the commissions. To do that, it is clear that commissions must remedy many of the worrying behaviors and actions they have been taking and do more to protect the security and integrity of those victims who do come forward. Unfortunately, efforts by victims' groups to improve operations at the commissions thus far have gone unanswered.

This includes demands that the commissions produce an operational plan or a white paper describing what the commissions have done, what challenges they face, and why their mandate should be extended.

Many participants indicated that the commissions are not serious about resolving the legacies of the conflict or learning what is important to victims. "In place of truth seeking, it looks like a political effort. Victims are afraid to speak freely," said one participant.



Women participants at workshop in Nepalgunj in November 2017. (Rejina Bhattarai)

The commissions themselves complain about the inadequacy of the laws that govern them, but they do nothing to correct the situation. One of the commissioners is said to have admitted that they will not be doing anything and that the commissions are "just for show."

Understaffing at the commissions remains an ongoing challenge. Although the TRC was to have around 70 staff members; in reality, that number was reduced by the government to about 50. While additional concerns about the professionalism and commitment of the commissioners have also been raised, it needs to be pointed out that the general lack of support from the government as well as national and international organizations has worsened the commissions'

⁹ Actually, the Nepali government delayed long-term reparations measures as well as recognition of rape victims and torture survivors on the basis that the commissions being established will include those violations in their mandate.

¹⁰ In Colombia, even when the issue of alternative punishment of non-State actors responsible for serious crimes was being discussed, the World Bank offered \$3M to support collective reparations implementation – a reparations program that preceded the truth commission and the special jurisdiction for peace, provided for in the Peace Accord ratified in November 2016. In the Philippines, both UN agencies and Western governments provide funding for implementing a transitional justice component of the peace agreement with Muslim secessionist rebels in the southern region of Mindanao, even if the peace process has not excluded the possibility of amnesties for serious crimes.

ability to perform. Action must be taken immediately to increase meaningful support to the commissions and provide oversight to ensure the competency of those who staff them if the year-long extension is to mean anything.

In a meeting with the TRC, ICTJ received an update about the status of the investigation and statement taking process underway. Among other things, ICTJ was informed about a newly created taskforce that is considering amending the definition of victim under the TRC Act to include members of the security forces. We discussed the fact that families of security forces already receive benefits and compensation as employees of the state, and, as combatants, likely fall outside the mandate of the commission which covers crimes against humanity for “unarmed persons or civilian population or [those] committed systematically.”

ICTJ stressed the negative message such an amendment would send to conflict victims and its potentially inflammatory impact, especially if the TRC Act were amended to include security personnel, but not made compatible with the Supreme Court’s decision. ICTJ will continue to monitor the developments of the task force as the inclusion of security force personnel in the definition of victims under the TRC Act would be of great concern to us.

A final issue of concern relates to the recent transfer of approximately 400 complaints from the CIEDP to the TRC. Those case files consisted of cases where a complaint had previously been filed with the IRP for benefits in cases where the victim had been killed. The CIEDP has taken the position that because complainants had previously sought and obtained a death certificate, the commission no longer has jurisdiction and cannot conduct investigations or recover remains. This despite the fact that the CIEDP had previously indicated that it would investigate any cases where victims were reported missing, abducted, or their fate remains unknown. The CIEDP is now taking the problematic position that the complainants must seek an amendment of the death certificate. CVCP and families of victims are insisting that they will not support the work of the CIEDP if this decision stands.

In our discussion with the CIEDP in which they asked what our position is on this issue, we reminded the commission that at the very least, it should do no harm. We said that the issuance of a death certificate – particularly those obtained mainly or only to access desperately-needed economic and social needs – does not factually resolve the status of the disappeared person. We said that as far as the families of the disappeared are concerned, they still do not know what happened to the disappeared person and whether he or she is living or deceased. Turning over these cases to the TRC only adds to the pain of not knowing, since it means the institution created by the state to find the disappeared has simply concluded – without investigation – that the person is dead. The CIEDP said it would reflect on our views. We have also told CVCP and the National Network of the Families of the Disappeared (NEFAD) of this position and urged them to reiterate these arguments.

The tasks underway at the TRC and CEIDP require significant technical assistance which cannot be expected to be available in the national jurisdiction. The required technical assistance can and should be provided by organizations and individuals with a proven comparative experience record and by other countries where robust measures for the search of the disappeared have already been implemented. The resources required are also significant and multilateral assistance instruments should be privileged in order to adequately equip the two commissions.

Conclusions and Ongoing Civil Society Initiatives

The overall tone of many of our meetings was one of frustration with the commissions’ operations and a sense that the elections and the uncertainties they created have caused a climate in which there is little interest or political will to work on transitional justice issues. Although the commissions continue to make promises and stir hope in the public forum, they appear to have made no real commitment in favor of implementing their mandate.

At a CVCP-organized National Strategy Workshop on Transitional Justice in January, in which over 100 victims' leaders from seven provinces outside Kathmandu attended, alongside civil society organizations mostly based in the capital, there were a number of positions that substantively showed the way forward for CVCP in its 'critical engagement' with the TJ commissions.

The most important view that many victims' leaders echoed, was articulated by one civil society leader (Raju Chapagain of Juri Nepal): "there is a need", he said, "for ensuring prosecutions of serious crimes, but reparations should not be ignored or undermined in the process." In a gathering that had more questions about truth-telling and reparations than about amnesties and prosecutions, this point gained significant support.

Similarly, at the strategy workshop, former Attorney General Hari Puyal reflected a point we have conveyed to both the UN and international community actors in Nepal: the two commissions "must in some way or another receive technical assistance from the international community." He said that that "is how both commissions can gain credibility."

Ruben Carranza, who spoke for ICTJ at the workshop, showed a video clip of the Peruvian truth commission – because of Peru's own experience with a Maoist insurgency and the root causes of conflict involving land, identity and equality that resonate in Nepal -- and discussed comparative experiences in which the truth telling function of a truth commission not only gave dignity to victims but moved society to recognize what victims lost and need. He pointed out that even if CVCP and the larger universe of victims' families number in the thousands, there are still 28 million Nepalis, many of whom are as poor and marginalized as the victims, who must understand why transitional justice is needed and why victims should get reparations, find the disappeared, and receive justice.

An oft-repeated concern centered around the fear that the interim relief program will ultimately be the only assistance measure that the government will provide. To counter that eventuality, many human rights defenders called for ICTJ and other members of the international community to exert pressure on the commissions and encourage them to set priorities for meeting their mandate; otherwise they fear the commissions may get bogged down in individual investigations without ever making progress and victims will be forgotten.

This would be particularly problematic for victims of torture and sexual violence who did not even benefit from the interim relief program. Many victims and victims' groups emphasized that strategic efforts should focus on those groups in particular.

In fact, the women victims who participated in the two-day workshops had ideas and proposals for concrete steps that should be taken to support theirs and other victims' needs. They made numerous recommendations for actions related to improving access to justice and efficiency of government-led initiatives; providing education and vocational training for women victims and their children; job and economic assistance; healthcare; issuance of victim identification documents; and memorialization and acknowledgement initiatives, including a national "Day for Victims" and an official public apology and acknowledgement of victims.¹¹

It is worth noting that some organizations are already actively taking steps to amplify the voices of these victims, who are often marginalized even from traditional victims' groups and activist spaces. For example, the organization Story Kitchen was planning a 'survivor's meeting' with Dr. Poonam Rishal from the Women's Rehabilitation Center (WOREC) where women would participate in yoga, meditation, and other self-care activities. Sixty-eight conflict victims will participate in the program.

This will also be followed by a 'Tribunal' in March 2018 where women will have the opportunity to share their stories, possibly before the Special Rapporteur on Violence Against Women.

¹¹ For a complete set of the proposals made by women victims, see the newsletter circulated by ICTJ and JuRI-Nepal. See link: <http://mailchi.mp/3d86c97d1d90/gender-newsletter>

Relatedly, there is a grassroots Women Conflict and Survivor's Network forming for women victims, though support from organizations like ICTJ and others will be important, especially since they have faced some resistance even from within the victim community.

This resistance is indicative in many ways of the added struggle these women victims face in having their voices, experiences, and demands heard.

Overall, there is still hope as a media representative attending one of the workshops urged victims and victim groups to look at the positive aspects of the commissions and recent developments, including the holding of elections. He said "we are still talking about the conflict. That is good because it is not forgotten."

Next Steps and Recommendations

Based on the findings presented here and on the ongoing work of our ICTJ Nepal Program, ICTJ offers several recommendations and identifies several potential openings for advancing transitional justice initiatives in the near term:

Take Immediate Steps to Improve the Operations of the CIEDP and TRC Given the One-Year Extension

In light of the recent decision to extend the mandates of the TRC and CIEDP, it is particularly imperative that immediate steps are taken to improve the operations of the two commissions.

The Government of Nepal should allocate adequate resources to the commissions and ensure the competency and credibility of all commissioners and staff, including in regional offices, whose main task is to treat all victims with respect and dignity and contribute to vindicate their rights.

When considering what resources and capacities are required, the Government should consider among others—

- The CIEDP should move forward to meet the immense outstanding obligations owed to families of the disappeared to ensure that searches for and exhumations of human remains are conducted and the bodies returned in a respectful and religiously and culturally appropriate way that ensures the dignity of the deceased and their families.
- The CIEDP should also reconsider its treatment of the approximately 400 files that were transferred to the TRC. It should fulfil its promise to uncover and reveal the truth to victims of enforced disappearance, including those who were compelled to request a death certificate in order to access essential benefits under the IRP. All victims of enforced disappearance are entitled to know what happened to their loved ones and to recover the remains.
- The TRC and CIEDP should take immediate steps to improve statement taking practices consistent with the protocols already established and the 2014 TRC Act and the rules issued by each of the commissions. The statement-taking process has not been functioning effectively and is not ensuring the well-being of victims. Training of statement takers is necessary and should include guidance for ensuring that victims' complaints are recorded fairly and accurately while recognizing their dignity. This should include having a woman employee available when statements are being recorded, consistent with rules of the commissions. Steps should also be taken to verify that the information contained in the complaints already filed is accurate.
- International organizations should encourage regional and international partners to engage with the commissions and provide the required financial and technical support in the interest of ensuring that they operate in a way consistent with the rights of victims and those accused of human rights violations and other crimes, whether under international or domestic law.

Ensure that the Commissions Achieve their Objectives

The 2014 TRC Act establishes the mandates of the TRC and the CIEDP. Each is tasked with investigating and revealing “the truth” about gross violations of human rights and crimes against humanity during the armed conflict, creating an “environment of sustainable peace and reconciliation” in society, and to make “recommendation for legal action” against the perpetrators and for “reparation to the victims of those incidents.”

To achieve these objectives, the commissions must recommit themselves to conducting the essential truth seeking functions they were tasked with. This means researching the truth of what happened and making it public, (through public hearings or wide dissemination and discussion of the final reports), and submitting their findings to the government.

The final reports may contain some details of individual investigations which can be used to exemplify a pattern of violations. More importantly, the report should present the root causes of the armed conflict, as well as “policy, legal, institutional, administrative and practical reforms required to guarantee non-recurrence.”

To do that, the commissions need to—

- Broaden their work beyond case-by-case investigations of individual complaints to include research on the root causes of the armed conflict. That might include research on unjust land and labor issues and the economic and social rights violations that happened prior to and/or as a result of the conflict.
- Assess whether public hearings should be held by considering, among other things, what objectives they might serve; how they should be conducted to protect the rights of victims, witnesses, and the accused; and minimum staffing and budget requirements.
- The TRC and CIEDP should ensure the existence of clear and sound criteria for recommending cases to courts for prosecution if they intend to do so, and for protecting the due process rights of perpetrators and the safety and confidentiality of victims, witnesses, and their families.
- Ensure that victims of all the gross violations of human rights that the commissions are mandated to investigate are treated consistent with international laws and standards. This must include those who suffered enforced disappearance and torture, despite the fact that these crimes were not criminal offenses under Nepal law at the time of the conflict.
- Make recommendations on reparations for the government to adopt that will provide reparations as a matter of right to victims and a timetable and plan for the reparations program to be implemented. That plan should include recommendations about how to dispense reparations benefits so that they reach vulnerable and marginalized victims populations, including victims of gender-based violence.
- The TRC should avoid, under any circumstances, modifying the TRC Act to include members of the security forces as victims. This would be an inflammatory step that would disrupt any potential progress toward justice for victims.

Establish and Implement a Work Plan

Given that the extension is for only one year, yet much of the commissions’ mandates remain unfulfilled, it will be important that both the TRC and CIEDP consult with victims and issue a clear set of objectives and a work plan with a month-by-month timeline.

Among other things, that workplan should include—

- An outline of progress made to date toward fulfilling the mandate of the commissions and a listing of outstanding projects under the mandate.

- Public consultations with victims and victims' organizations to obtain feedback about operations already completed and to seek input for implementing the remainder of the commissions' unfinished mandate.
- Aggregate and analyze the data collected and research additional sources of information to prepare the final report.
- Writing of a final report that establishes an accurate and impartial historical record of human rights violations committed during the conflict and for understanding the root causes of the decade-long war and the roles of different actors.
- Mechanisms for soliciting and obtaining formal comments from victims, victims' organizations, and civil society on guidelines for issuing and implementing reparations recommendations.
- A timeline for recommending and/or implementing acts of symbolic reparations, including official public apologies, memorialization initiatives, and events timed to coincide with the publication of the final reports of the commissions.
- Planning for the commissions' eventual dissolution and the transferring and archiving of commission files. The commissions should take utmost care to protect victims' identities, ensure their full safety, and ensure the proper confidentiality of their statements. This includes following protocols for proper documentation and handling of all statements and information submitted by victims and family members. If true, the commissions should immediately cease with the practice of asking victims to sign blank statements. This would constitute an egregious violation.
- Documenting and preserving complaints to forestall future claims of prescription or non-criminalization.

Focus on Opportunities Presented by Local Elections

In 2015, Nepal adopted a new constitution organized around three-levels of government—federal, provincial, and local. This restructuring of the government involves the devolution of powers and functions to local governments.

As part of that process, in 2017 several cycles of elections were held to fill positions at the national, provincial, and local levels. The devolution of powers at the local level continues to play out as newly elected officials take their seats and assume their responsibilities. As such, there is opportunity for politics to break out of old patterns.

Within this new structure, opportunities should be explored for facilitating engagement between victims, victims' groups, and newly elected officials, likely starting in the first quarter of 2018. This should include considering how local governments may exercise their powers under the Local Government Operations Act, 2017 to devise laws, policies, and programs that address victims' rights to truth, justice, and reparation.

Those powers encompass government sectors with particular relevance for victims particularly and transitional justice broadly, covering as they do education, health and sanitation, local records, agriculture and livestock, social security, and poverty alleviation, among others.

In addition, over time there should be greater clarification about what revenue could be and will be made available at the local level for addressing victims' needs. We understand that some resources are already being made available, for memorialization initiatives for instance.

Victims, victim groups, civil society, and international actors will each need to emphasize the urgency of victims' needs and advocate on behalf of policies that prioritize the allocation of resources consistent with those needs.

Increase Support and Coordination for Victims' Organizations, Especially Groups Representing Sexual Violence Victims

"Victims need to unite in support of their rights and create pressure on the government."

Any effort to advance transitional justice planning requires the commitment of government, civil society, victims and victims' groups, and international actors and donors. The women victims who participated in the November 2017 workshops emphasized the importance that coordination efforts can play in building and sustaining that commitment.

To help with that effort, ICTJ will continue supporting victims' organizations' efforts to build additional networks of victims to draw attention to their specific needs and demands. This will also include continued support around coordination and information-sharing, two key approaches for advancing victims' needs and priorities identified by victims' representatives of different backgrounds. ICTJ recommends that civil society and victims continue their regular coordination meetings, while also taking advantage of joint press meetings for the wider sharing of information. International support for radio programming like that undertaken by our partner Equal Access Nepal and others is encouraged.

Additional support should also be given to building and strengthening networks for women victims. Many women shared the sentiment that, "We have CVSJ [Conflict Victims Society for Justice] and CVCP, but we also need exclusive women networks." Some women have already formed groups in different districts. One woman proposed a separate women's network for the disappeared. Similar networks should be considered specifically for victims of sexual violence who have thus far faced the greatest challenges in gaining access to benefits and relief, and also in getting their voices heard as loudly as others. Effort needs to be taken to ensure their particular needs and demands are also represented.

The international community and civil society should actively take steps to provide greater support and technical assistance to women's networks, women's groups, and others working on behalf of groups of women to strengthen their capacity to engage. For their part, the TRC and CIEDP should also take active steps to engage and consult with these organizations so that their views, demands and concerns are taken into consideration.

Explore Opportunities for Collective Reparations, Memorials and Civil Society-Led Truth Telling

Memorialization continues to be a major priority in Nepal, with many local initiatives already underway but with expressed desire by many for additional memorials. Many victims were unaware that in addition to individual reparations, programs might be established to implement community-based or collective reparations, targeting communities or groups as a whole.

There was great interest in learning more about and considering such approaches, so this is an area that will be discussed further.

ICTJ will also continue to explore whether an unofficial public hearing, perhaps at the regional level, could bring attention to victim's priority issues, taking into account the obvious security concerns posed by the continued presence in government of alleged perpetrators.

Ensure that Transitional Justice Processes Are Gender-Sensitive By Among Other Things Increasing Women's Meaningful Participation

"Women and men need to understand women's sentiments. Women and men should be given equal footing."

The Government of Nepal should ensure that all future transitional justice-related processes include the active participation and consultation with women victims (including sexual violence victims) and incorporate gender sensitive approaches in their design and mandate.

Women's involvement in transitional justice will be crucial at every stage going forward, not only in all aspects of the commissions work, but also in the development of the proposals and priorities that will ultimately determine future policies, including for reparations. In that regard, we emphasize the following:

- **Ensure sufficient female staff within both commissions, particularly among statement taking staff.** The commissions should have a proactive policy of hiring an adequate number of female statement takers to provide victims who come forward the option of speaking with a woman. This is critical for women victims to feel comfortable coming forward, particularly victims of sexual violence. Resources should be immediately allocated by the Government to ensure hiring can commence immediately if needed.
- **Offer mandatory training for both male and female staff at the commissions on gender-sensitive processes and engaging sensitively with women victims.** Encouraging underrepresented voices and issues requires special training so that staff are sensitized to these concerns. This is especially important for any staff member who will be working directly with victims, such as statement takers. Ensuring that those who take statements or testimonies are properly trained in a range of interview techniques and the breadth of women's human rights experience will enable them to look for cues to patterns of abuse and know what questions to ask to get at women's experiences.
- **Victims' groups and civil society organizations should take a more proactive oversight role and exert pressure to ensure transitional justice bodies act in gender-sensitive ways.** All victims' groups and civil society organizations working on transitional justice issues have the responsibility to demand a gender-sensitive process. This burden should not fall solely on women's groups and their recommendations and demands must be supported. These groups should also make sure that all recommendations and positions they issue reflect the views of women victims.
- **Include women in all political parties and committees.** The recent increase in female deputy mayors at the local level is encouraging. Their political legitimacy should be reinforced and respected. These deputies should be empowered and given space to meaningfully fulfill their roles and take an active role in policymaking, particularly that which affects victims. Political parties should actively recruit and support women candidates for office and all bureaucratic barriers to their running should be eliminated.
- **Ensure that women's experiences and voices are part of the public narrative, with special attention to victims of sexual violence whose voices may otherwise go unheard.** For example, the TRC and CIEDP have a responsibility to ensure that any final products or outputs, such as public hearings and final reports, clearly represent and reflect women's experiences of conflict. This means taking into account diverse representation of women.
- **Other measures such as public acknowledgements and apologies or memorialization initiatives should recognize women victims and honor their experiences and suffering.**
- **Encourage discussion about the need to change societal norms for women.** This includes changing cultures of violence against women, but also encouraging and allowing women to pursue their education and employment.

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