

Nepal: Transitional justice process must be brought on the right track

FEBRUARY 11, 2018

The ICJ, Amnesty International and TRIAL International today called for the Government of Nepal to commit to a transparent and consultative transitional justice process that complies with international law and the judgments of the Supreme Court of Nepal.

On 6 February, the Government of Nepal extended the mandates of the Truth and Reconciliation Commission (TRC) and the Commission on the Investigation of Enforced Disappearance of Persons (CIEDP) for an additional year and committed to the selection of new commissioners by April 2019.

Following the announcement, the ICJ, Amnesty International and TRIAL International voiced concerns about past approach to transitional justice and urged the Government to ensure that the next two months are used to get the flawed process on track. The organizations warned that this should not become another missed opportunity to ensure that victims are provided the justice, truth and reparation that they so desperately seek.

“A further one-year extension will be meaningless if measures are not taken to secure the independence and impartiality of the commissions,” said Frederick Rawski, ICJ Asia Pacific Director. “This can only be achieved through a transparent selection process driven by a genuine will to combat impunity - not just for conflict victims, but for future generations.”

The three organizations reiterated their view that the process to date has failed to deliver justice, truth or reparation for victims of crimes under international law and gross human rights violations or establish laws and institutional safeguards to ensure that such crimes are never repeated. The organizations underscored the need for independent, competent and impartial commissions, compliance with international law, and the meaningful participation of conflict victims, civil society and National Human Rights Commission in the design and implementation of the process.

"This is a great opportunity for Nepal to learn from its past, as well as experiences from other post-conflict societies, that the credibility of transitional justice process ultimately lies on the integrity, competence, independence and expertise of the commissioners. The

independence of the Commission, together with a legal framework in accordance with international law, will make or break the success of the commitment to guarantee justice, truth and reparation," said Biraj Patnaik, South Asia Director of Amnesty International. "The process for appointing new commissioners must be transparent and open to public scrutiny. Victims and civil society must have a robust opportunity to propose and vet candidates."

The organizations also noted with disappointment that substantive legal concerns raised repeatedly by victims, civil society and the international human rights community have gone unanswered. The government has not given a clear indication as to whether or how these concerns will be addressed.

"In addition to its obligation to ensure that conflict victims have access to an effective remedy and reparation, the authorities have a separate and independent obligation to investigate and if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility in fair trials before ordinary civilian courts - and, if found guilty, punish them with appropriate penalties which take into account the grave nature of the crimes," said Helena Rodríguez-Bronchú, Head of TRIAL International's program in Nepal. "These obligations are clearly established in international law, as well affirmed in ruling after ruling by the Supreme Court. It is about time that the Government stopped proposing measures that are clearly inconsistent with the letter and spirit of those judgements."

Concerns raised about existing, and proposed, legislation include: disparities between the definitions of specific crimes under international law and human rights obligations and violations under national, and international law; inadequate provisions to ensure that serious crimes under international law are subject to criminal accountability (including punishment proportionate to the seriousness of the crimes); and a reliance on compensation at the expense of other forms of reparation and remedy for conflict survivors and their families

The ICJ, Amnesty International and TRIAL International had previously submitted a legal analysis of draft transitional justice legislation circulated in 2018, including recommendations on how to ensure compliance with international law and good practices. It is available at: <https://www.amnesty.org/en/latest/news/2018/07/nepal-draft-bill-on-transitional-justice-falls-short-of-international-law-and-standards/>