

Challenges of ensuring justice to victims in post-conflict Nepal

Bijay Raj Gautam¹⁵

Informal Sector Service Center, Nepal

Background: The incidents of grave human rights violations committed in the past, if not addressed prudently, are likely to result in serious repercussions. Due to the total disregard of numerous human rights violations committed during the decade-long armed conflict, Nepal's human rights situation has been a matter of worry even after the end of the insurgency. This paper argues that it is indispensable for the government of Nepal to revisit the country's bloody and repressive past in order to adopt necessary measures towards reconciliation. This research provides a thorough review of the draft Truth and Reconciliation Commission bill introduced by the government of Nepal with particular emphasis on its shortcomings. The discussion of the limitations of the bill is supported with pertinent anecdotal evidence gathered through fieldwork.

Indispensability of Probing into Past Human Rights Violations: If important legal principles -- including International Humanitarian Law (IHL), International Human Rights Law (IHRL), the ICRC rules of customary international humanitarian law, common article 3 of the Geneva Conventions, the principle of distinction, indiscriminate attacks, the proportionality and precaution in attack, the principle of humanity, double jeopardy and the attack directed against any civilian population¹⁶ -- had been taken into consideration by the warring sides, violations and violence could have been minimized at that time. Also, the trajectory of Nepal's armed conflict probably would not be so grim. The parties of the armed conflict in Nepal disregarded these issues, and as a result, an unprecedented spate of violence and violations occurred. It is therefore indispensable to consider the truths of the country's bloody and repressive past through the formation of related commissions despite the fact that it might be risky, including the unearthing of painful traumatic memories.

Condemnable Ordinance: The government of Nepal has taken some steps toward the establishment of a transitional justice mechanism through an ordinance, but because of fundamental flaws within it, the ordinance has been criticized nationally and internationally. Some diplomats have expressively said that they will not be supporting the

transitional justice mechanism, arguing that the ordinance is not on par with international standards.¹⁷

¹⁵ Executive Director, Informal Sector Service Centre (INSEC), G.P.O. Box: 2726, Kathmandu, Nepal, Tel.: +977-1-4278770; Fax: +977-1-4270551, (M) +977 98510-58455, E-mail: bijaya@insec.org.np, Web: www.inseconline.org/ www.insec.org.np

¹⁶ These aspects have been especially focused by the Nepal Conflict Report published by the UNOHCHR. Details can be accessed from http://nepalconflictreport.ohchr.org/html/2010-12-00_legal-framework_applicable-law.html

¹⁷ Donors against funding TRC under existing law, <http://www.ekantipur.com/the-kathmandu-post/2013/05/04/top-story/donors-against-funding-trc-under-existing-law/248347.html>