

Press Release

Truth without justice will not be acceptable

28 November 2011, Kathmandu

1. The families of conflict victims have been struggling for justice and truth for incidents of human rights violations committed during the armed conflict. Their organisations and the human rights community has constantly been advocating for these problems to be addressed. They have further demanded that the bills regarding the Truth and Reconciliation Commission and Commission on the Disappeared – which are now being considered at the Constituent Assembly – should be passed in a manner that will bring to light the truth and will ensure justice to victims. They have expressed deep concerns that all parties, the political parties in particular, were not serious about this process. Any law or mechanism lacking the minimum international human rights standards aimed at establishing truth and delivering justice will not be acceptable to us. We warn in advance that if our demands are not addressed, or if the bills are passed by removing the victims' right to justice, we will be compelled to reject them.

2. We strongly demand that the following demands be fulfilled to ensure rights to truth and justice:

(a) Regarding Pardons: Any kind of provisions such as pardon, amnesty, case withdrawal, etc. for any incidents constituting serious violations of international human rights and humanitarian law will not be acceptable to us. Furthermore, incidents of sexual violence should be added to the list of incidents for which pardon cannot be granted. No attempts should be made to remove any such incidents from the list. In this regard, the Government of Nepal should respect its commitments made to the victims' families, civil society and the human rights community during its discussions, consultations, etc. on the granting of pardons or amnesties.

(b) Regarding Independence of the Commission: A public process should be determined for selecting Commissioners in an independent, impartial, transparent and competitive manner, bearing in mind the best international practices in order to guarantee the independence of the Commissions and to maintain their propriety.

(c) The role of the Attorney General: A provision should be made to review the right of Attorney General to decide whether or not to prosecute serious crimes. This should be made in view of the need to investigate incidents of serious crimes in an independent and impartial manner, and to prosecute the perpetrators involved.

(d) Regarding the protection of victims and witnesses: A special provision should be made in both bills to ensure the protection of victims and witnesses in order to secure their cooperation. Any victim or witness who wishes to name any perpetrator in course of giving his or her statement should be informed of the provisions in place regarding their protection. Similarly, regarding other crimes,

arrangement should be made to ensure the security of victims in relation to the pressures that may be exerted on them by perpetrators. Special arrangements should be made for the custody of evidence obtained during the investigations, and a public record office should be established to ensure access to this information in the future.

(e) Provision of information to family members: Arrangements should be made to inform the members of conflict-affected families of the venue, date and time of public hearings and of the establishment of the Commission and its procedures. They should also be informed of any report to be prepared by the Commissions following the expiry of their terms of office.

(f) Regarding exhumations: As the bill contains a provision on exhumations to be carried out by the Commission in order to establish facts regarding incidents, a law should be formulated on this process, consistent with international standards and best practices. The Commission should proceed with exhumations-related work, provide information on every development and in so doing ensure participation in the process.

(g) Regarding the statute of limitations: There should be a provision that clearly states that there will be no statute of limitations for prosecutions in relation to recommendations made by the Commissions. Arrangements should be made in the Constitution that retrospective legal principles will not apply to incidents of human rights violations committed during the armed conflict.

(h) Release of reports: Arrangements should be made to immediately release the reports of the Commissions to the families of the victims and to the general public. The names of perpetrators should be mentioned in the reports with the agreement of the victims.

(i) Coordination between the Commissions: Once established, the two Commissions should act in an integrated manner. Since there maybe confusion, duplication and different approaches undertaken by the Commissions, clarity regarding their work is essential. Arrangements should be made from the beginning to run these Commissions simultaneously by minimizing duplication in their work.

If the above demands are not addressed in a just manner, and if attempts are made to deprive us of justice under the pretext of seeking truth and reconciliation, such truth without justice will not only be called into question, but this will not be acceptable to us. The community of victims will be compelled to reject such meaningless transitional justice laws and mechanisms.

With solidarity,

The Transitional Justice Advocacy Group