

December 19, 2014

His Excellency Sushil Koirala
Right Honorable Prime Minister,
Singha Darbar, Kathmandu,
Nepal

Re: Formation of the Truth and Reconciliation Commission and the Commission on Enforced Disappearances

Your Excellency:

We, the undersigned local and international nongovernmental organizations, are writing to convey our concerns about the process of appointing commissioners to the Truth and Reconciliation Commission and the Commission on Enforced Disappearances under the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act, 2071 (TRC Act, 2014). We also reiterate our long-standing call that the TRC Act be brought into line with international law and Nepal's Supreme Court Order of 2 January 2014, in particular that it should prohibit amnesty for acts which are crimes under international law.

As you are aware, four different writ petitions pending in the Supreme Court of Nepal challenge various provisions of the TRC Act. One of the petitions, filed on August 5 by conflict victims, expresses their concerns about the lack of transparency on how the commissions under section 3 of the TRC Act will be formed. They have also raised concerns about the possibility of forced reconciliation without the consent of victims (section 22), the discretion that vests with the Ministry of Peace and Reconstruction to act on the commissions' recommendation and seek prosecution of individual perpetrators through the Attorney General's office (section 25 and section 29), and the amnesty powers that vest with the commission for a range of crimes (section 26).

We acknowledge that the Recommendation Committee has held discussions with victims' groups, political leaders, human rights activists, and civil society members. We appreciate the Recommendation Committee's efforts to seek diverse and strong candidates and to provide a window for submitting grievances against short-listed candidates.

We also note that the Honorable Member Sudip Pathak, who represents the National Commission of Human Rights on the Recommendation Committee, expressed a desire to move the process of appointing Commissioners along expeditiously.

However, we consider that more is needed to create a transparent, consultative process that incorporates the specific concerns of women survivors, including survivors of sexual violence, who have been left out of government reparation programs, and who have been stopped from filing claims in court due to a 35-day statute of limitations period on reporting sexual violence.

We urge you to express your view that the Recommendation Committee chaired by Retired Chief Justice of the Supreme Court Om Bhakta Shrestha adopts a more robust, transparent, and consultative processes to appoint commissioners under the TRC Act, 2014 by:

1. Immediately disclosing the selection criteria being used by the Recommendation Committee to shortlist applicants and allowing a reasonable period, for example, 15 days, for public comment.
2. Seeking and making public the views of every short-listed candidate on the following key questions raised by victims and human rights activists:
 - a. If an alleged perpetrator files an application for reconciliation under section 22 of the Act, what measures would a commissioner-candidate propose to ensure that a victim is not forced to reconcile without his or her consent?
 - b. How would the candidate approach the scope of amnesties under section 26 of the Act?
 - c. Does the candidate consider that the law imposing a 35-day limitation period for filing a criminal complaint and seeking prosecution for rape should be repealed, and further that until it is repealed, would not impede implementing any future recommendations of the committee to prosecute perpetrators of conflict-related violence?
 - d. What draft rules would the candidate propose, under section 44 of the TRC Act, with a view to ensuring that the Ministry of Peace and Reconstruction does not act to obstruct prosecution of individuals or to otherwise implement the commissions' recommendations?
3. Immediately making public the reports from consultations with victims, civil society, and donors held by the Recommendation Committee while taking measures to respect the privacy and confidentiality of individual victims.
4. Disclosing what measures were taken by the Recommendation Committee to enable the full participation of survivors of sexual violence during consultations with victims. Given their heightened need for privacy, did the Recommendation Committee, for example, at a minimum arrange for separate interviews with survivors?

5. Taking measures to reach out to candidates who are qualified and experienced with dealing with victims of serious crimes, including traumatized victims, survivors of sexual violence and child victims, and conducting targeted outreach to women candidates.
6. Increasing the time-period of five days given to the public to file grievances against candidates shortlisted for the commission as suggested in the guidelines for the working procedures of the Recommendation Committee.

These measures are critical to building the legitimacy of the Commissions and winning the trust of survivors of Nepal's civil conflict, including women who experienced sexual violence; leading human rights activists and civil society members in Nepal who have opposed the formation of the TRC due to weaknesses in the law; and international observers.

These recommendations are set in the context of longstanding concerns about the TRC Act which have been echoed by the UN Office of the High Commissioner for Human Rights (OHCHR), and other UN human rights bodies and mechanisms, including the Human Rights Committee. Among other things in addition to concerns that the Act does not provide sufficient guarantees of the independence and impartiality of the Commissioners and the operation of the Commission, highlighted in the UN OHCHR assessment, the TRC Act does not conform to Nepal's international legal obligations, including because it allows for amnesty for crimes under international law. Five thematic experts of the UN Human Rights Council have also voiced similar serious concerns over the TRC Act, passed by Nepal's Constituent Assembly in April 2014. We once again urge you to take measures necessary to ensure that the TRC Act is amended so that it is brought into line with international law, before the Commission commences its work.

Sincerely,

Accountability Watch Committee (AWC) – Sushil Pyakurel – Chairperson

Amnesty International (AI) – Richard Bennett – Asia-Pacific Director

Center for Legal Studies (CLS) – Birendra Thapaliya – Chairperson

Conflict Victims' Committee (CVC) – Bhagiram Chaudhari – Chairperson

Conflict Victims Orphan Society (CVOS) – Suman Adhikari – Chairperson

Conflict Victims' Society for Justice (CVSJ) – Janak Rawat – Chairperson

Human Rights Watch (HRW) – Brad Adams – Asia Director

International Commission of Jurists (ICJ) – Sam Zarifi – Asia-Pacific Director

CC:

Shri Om Bhakta Shrestha,
Honourable Former Chief Justice of the Supreme Court of Nepal,
the Chairperson of the Recommendation Committee,
C/O Ministry of Peace and Reconstruction,
Singha Darbar, Kathmandu Nepal