



**Truth and justice mechanisms:
Ensuring accountability and sustainable peace and democracy in Nepal**

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Ladies and Gentlemen,

I am grateful to the Himal Southasian Magazine and the International Development Research Centre as the organizers of this conference, as well as to the International Centre for Transitional Justice as the co-convening organization, for inviting me to speak here today.

Since I last visited Nepal in January 2005, the Nepalese people have achieved remarkable political change which now has to be consolidated into durable peace, social justice and democracy. The sustainability of such a future vision requires serious attention to accountability for past wrongs and recognition of the need for the construction of public institutions to prevent their recurrence.

Efforts to address accountability issues often pose significant political and technical challenges and might even encounter resistance on the part of key actors. The temptation to leave the past alone can therefore be great. But international experience is sobering and its lessons should not be forgotten - the potential risks of “selective amnesia” can seriously threaten the democratic gains achieved and profoundly jeopardize the sustainability of peace.

Though a relatively new field, transitional justice has, however, developed a range of tools which, in their transparency, their focus on the victims and their emphasis on wide spread participation can assist in ensuring that peace is indeed sustainable. These tools include truth-seeking mechanisms, targeted prosecutions of human right

violators, vetting processes, institutional reforms and reparation programmes for victims.

As the term indicates, transitional justice mechanisms are used in national contexts experiencing a transition from autocratic rule to democracy and/or from armed conflict to peace. Often, societies in such transitions lack strong, independent, and impartial institutions to do justice to the citizens they serve. Many countries have therefore made use of transitional justice mechanisms, drawing where necessary on international assistance and expertise, in order to create a historical record of violations, to address impunity through prosecution, to provide reparation to victims, to safe-guard against a repetition of violent events and eventually to embark on necessary institutional reforms to address often deeply rooted inequalities and protect all human rights.

In Nepal, I am gratified that the parties to the Comprehensive Peace Agreement clearly see the need to address the past and toward this end have included several important provisions favoring accountability in the peace accord, particularly in the area of truth-seeking and reparations to victims.¹ In this context, I am going to address three aspects of enormous relevance to Nepal today: namely, truth-telling, reparations and prosecutions. While the first two are acknowledged in the peace accord, the third is not, but is equally essential.

The peace accord provides for the establishment of a Truth and Reconciliation Commission to ascertain the truth about human rights violations and create conditions propitious for national reconciliation. Lessons learned from other transitional contexts, including in South Asia, indicate that the establishment of such commissions must be accompanied by unambiguous political support in order to be fully effective. Such political will must go beyond merely permitting a notional truth-seeking process and must include support for the effective implementation of resulting recommendations, including those relating to criminal prosecution of individuals based on the findings of the Commission.

In other words, a truth commission is not a substitute for prosecutions. The two complement and reinforce each other. The findings of non-judicial truth commissions thus support judicial efforts to pursue effective investigations and prosecutions of human rights violators. In Peru, by way of example, the local truth and reconciliation commission handed over 47 well-documented human rights investigations to the judiciary and a specialized human rights prosecution system was established based on the commission's recommendations. Today, a total of 516 human rights cases are being pursued by the Peruvian judiciary.²

I understand that many Nepalese are frustrated, for good reason, with the limited impact of previous truth-seeking commissions such as the Mallik Commission. This context must be kept firmly in mind in order to ensure, this time around, the integrity

¹ Truth-seeking provisions in the Comprehensive Peace Accord (CPA): 5.2.3., 5.2.5. 7.3.2 and 8.4.

Reparations provisions in the CPA: 5.2.4., 7.1.3. and 7.5.3.

² *Balance de las Acciones del Estado en la Implementacion de las Recomendaciones del Informe Final de la Comision de la Verdad y Reconciliacion*, Coordinadora Nacional de Derechos Humanos, Peru, August 2006.

of any truth commission emerging in Nepal today. It is essential not to rush the process but rather to ensure that broad constituencies, including victims' groups and human rights NGOs at all levels, are thoroughly consulted and participate in shaping the design and focus of a future truth-telling process.

This need for transparency applies particularly to the means of selecting truly independent commissioners who are representative of the diverse ethnic, regional, caste and professional groups making up the men and women of this country. Other countries, when establishing truth commissions and appointing commissioners, have effectively used independent selection panels which have received nominations from the public.

The truth commission process should gain the confidence of the nation by being characterized by transparency and inclusiveness through broad consultations throughout Nepal.

Ladies and Gentlemen,

The peace accord also addresses the right of victims to receive reparations. In Nepal, my office has noted a tendency to pursue monetary compensation to victims of human rights violations, at the expense of other forms of reparations which might, in certain instances, be a better "fit". While financial compensation is often an appropriate component of an effective remedy, it cannot alone substitute for full accountability and prosecution of perpetrators, or exclude other forms of reparations. Violations should not be seen as a commodity that can be paid off by the perpetrator or the State.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation suggest that reparations can be provided through restitution, rehabilitation, satisfaction, guarantees of non-repetition and compensation. Symbolic reparations are significant as they can provide recognition to victims not only as victims but also as citizens and rights holders generally. A reparation program that delivers a variety of benefits ranging from the material to the symbolic, and provided both individually and collectively, is likely to have a broader reach and be more comprehensive..

Prosecutions of human rights violators - a third area of transitional justice - are often the logical outcome of a truth commission and an obligation upon States under international law whether explicitly spelt out in the peace accord or not. Some Nepalese human rights NGOs are reporting zero convictions for conflict-related human rights violations and are calling for a so-called "hybrid court", which would use Nepalese and international judges and a mix of national and international law. Short of such an initiative, international support to domestic prosecutions could certainly be considered. Meanwhile, the human rights community, including my own Office, has to continue supporting and advocating for effective investigations and prosecutions through the existing structures.

On all these issues, civil society, particularly victims' groups and human rights NGOs, is likely to be the driving force. Non-governmental organizations have carried out extensive human rights investigations already and can provide invaluable access to local communities, including to individual victims. It is therefore essential that any transitional justice initiative is designed and conducted with the full participation of

civil society groups. During my visit, I have heard how the human rights groups and victims' organizations in Nepal are quickly developing a capacity to effectively support processes of transitional justice. Based on our experience from other transitional contexts, I would encourage you to further strengthen the impact of your efforts on these issues by forming networks and coalitions which are less likely to be ignored by official policy makers.

All these efforts can be supported by the international community, when needed and appropriate. The United Nations, including my Office, has extensive experience from transitional justice processes in a large number of countries, covering diverse socio-political and cultural contexts. Similarly, specialized international non-governmental organizations, such as the International Center for Transitional Justice, have developed expert knowledge through their extensive support to transitional justice mechanisms around the world. This wealth of expertise is available to the people of Nepal, if requested. However, before deciding to make use of such processes a number of lessons learned from previous experiences should be carefully considered by authorities, civil society and other groups.

Most importantly, no one size fits all: each transition from conflict to peace is unique and calls for very refined and context-specific measures both judicial and non-judicial. As already stressed, decisions on the use of transitional justice mechanisms should be based on extensive national reflection and broad consultation with diverse constituencies, including victim groups: broad support from the general public is essential for the endeavour. This might take some time, but transitional justice processes should never be rushed.

Secondly, the question of timing has to be considered. In Nepal, other processes such as elections, political reform and weapons management are taking place at the same time, raising the issue of sequencing. Justice and peace are not contradictory forces, but there is always a fear that truth- and justice-seeking processes may threaten fragile post-conflict political environments. While this concern must be addressed, justice should not be held hostage to the interests of those who will threaten to resume conflict in order to avoid facing their own responsibility.

Ladies and gentlemen,

However you decide to make use of the transitional justice mechanisms discussed here, my Office stands ready to provide comparative information from other transitional contexts and help build the capacity of national authorities and civil society to make informed decisions on the most appropriate design of justice- and truth-seeking processes, supporting an effective transition to sustainable peace in Nepal. A transition which is victim-centered and highly inclusive of traditionally marginalized groups will offer the best chance truly to achieve social change and democracy in Nepal.

Thank you.