

The relationship between Transitional Justice mechanisms and the Criminal Justice system

29 March, 2011

Kathmandu – The Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) today releases a Legal Opinion paper entitled “The relationship between Transitional Justice mechanisms and the Criminal Justice system: Can conflict related violations and abuses be deferred on the basis of commitments to establish a Truth Commission?”

The paper explains that criminal accountability for conflict related human rights and international humanitarian law violations, which constitute a crime under national or international law, should continue to be undertaken by the regular judicial system and cannot be deferred to future transitional justice mechanisms, or suspended because of commitments to establish such mechanisms.

OHCHR-Nepal states in the paper that “the right of victims to an effective remedy applies at all times”, and therefore “the regular judicial system cannot be held in abeyance because a commitment to establish transitional justice mechanisms has been made”.

OHCHR strengthens this assertion in the paper through an analysis of both Nepal’s existing legal framework as well as the country’s obligations under international treaties, including the International Covenant on Civil and Political Rights and under customary international law.

In a number of post-conflict countries, transitional justice mechanisms have been established and have achieved a comprehensive set of objectives, including determining the truth in relation to human rights and international humanitarian law violations and paving the way for justice and reparation for victims. Transitional justice mechanisms, such as a Truth and Reconciliation Commission, and the regular criminal justice system, must work in a complementary fashion to ensure the rights of victims to an effective remedy.

This paper will be posted today on the OHCHR-Nepal website:
<http://nepal.ohchr.org>.