



VOICES FOR TRUTH AND JUSTICE

Closing Remarks by Jyoti Sanghera, Representative of OHCHR-Nepal On the Occasion of High Level Forum on TJ Mechanisms Hotel Everest, Kathmandu 15 June 2011

I am indeed honored to have been part of this high level interactive forum on behalf of the UN Human Rights Office in Nepal. We have listened today to the moving voices of victims and their allies make an ardent plea to seek the truth and secure justice. They have made this plea to you, the senior leaders of Nepal and by virtue of that role, the key duty-bearers of the Nepali society. We have also heard some serious concerns and apprehensions regarding the two significant draft bills on transitional justice - the Truth and Reconciliation Commission and the Commission of Inquiry on Enforced Disappearances.

Over the past years, as conflicts raged in several countries around the world and as these countries struggled slowly towards peace and democratization we as the global community some important lessons. It would serve us well to recall these for Nepal.

One such vital lesson is that the past however bloody or not, cannot be wished away, nor brushed under the carpet or denied. Unless confronted and dealt with it will keep coming back to haunt us in terribly obstructionist ways. So the question before us is how do we confront the past and how do we deal with it? The voices we heard today and have been hearing over the past many months clearly indicate that we **confront** the past with truth. Truth about what actually happened to those loved ones who disappeared into the darkness of the conflict, never to return. And then we **deal** with the past through justice and reparations.

For many of those Nepalis who suffered gross human rights violations, including death and disappearances of their loved ones, the past is still happening. It needs to be resolved with a closure. For the victims of the conflict who are still "**living the past**" we need to bring about a transformation so that they can live **with** the past. The trauma and suffering of an individual victim can be metaphorically extended to the life of a nation. Nepal's troubled past will continue to **contaminate** the present and the future of Nepal including its peace process unless resolved and reconciled through truth, justice and reparations. And history teaches us a second lesson, that institutional remembrance and resolution including through transitional justice mechanisms is one big step forward in letting go off the past and facing the present and future with a clean slate.

In this regard, the commitments expressed today by several senior political leaders in response to the concerns of the victim groups are encouraging. I do believe that in the coming phase of the enactment process of the TRC and the Commission of Enquiry on Disappearances, a genuine respect for the right to effective remedy, including truth, justice and reparation be made the foundation upon which the rule of law and the entire edifice of justice is established.



OHCHR fully endorses the victims' demand for a prompt adoption of the TJ bills with necessary amendments¹ that are compatible with international law and standards. I would like to take this opportunity to strongly emphasize the need to properly address the claims of thousands of conflict victims who continue to seek not just truth but also justice. And a third lesson that history teaches us is that this call for justice cannot be achieved without having a strong legal framework that conforms to international standards and best practices.

A fourth lesson learnt is that while repeated commitments towards transitional justice mechanisms expressed through the various accords offer a strong promise to the people these must be matched with political will to make good on the promises. The commitments made to the people of Nepal in the CPA and the interim constitution need to be supported by determined efforts by political parties, Government and State institutions, as well as the active engagement of civil society including human rights defenders in order to realize such commitments without any further delay.

And a last lesson for now, I would like to draw your attention to some key tenets of international law - that transitional justice mechanisms cannot replace the regular criminal justice system of a country. The TRC when it is set up, should help establish the truth of what happened through investigations. But it is an obligation of the state to also to undertake without much delay, investigations and prosecutions of all cases of serious violations of human rights and international humanitarian law committed both during and since the conflict.

In conclusion, then, I would like to request the Constituent Assembly members and political leaders to listen to and heed the call of the victims for truth, justice and reparation. And do what may be considered an anomaly by some:

Achanoko chot lai khukurile bujdhaina (The knife does not feel the pain of the chopping board)

Become the knife that feels the pain of the patient as it surgically cuts out the cancer of the past and restore the health of Nepal.

¹ Victims' amendments to the TRC draft bill have focused, among others, on the independence and impartiality of the Commission and inclusion of victims representatives; opposition to any provisions in the law that could undermine criminal accountability for the most serious crimes committed during the conflict; tasking the Commission with providing evidence and recommendations for prosecution directly to the Attorney General for action; ensure a strong victim and witness protection program and fund within the commission; full and free consent of the victims for reconciliation initiatives carried out by the TRC; reparations needs to be understood in the Bill as a victim right instead of only as a facility; and independent monitoring mechanisms to monitor the activities of the TRC. Similarly, with regards to the COI-D, victims called for the bill to include the crime against humanity and provisions of life imprisonment as a punishment; inclusion of a provision stating that there cannot be any amnesty for the crime of enforced disappearance; ensure that the penalty corresponds to the seriousness of the crime (in 2 of the Consultations, victims suggested that the main perpetrator and the accomplice should be sentenced to imprisonment for 20 years); clear provisions in the bill stating circumstances for minimizing and maximizing the punishment; no statute of limitations period for filing cases of disappearance; Tasking the Commission with providing evidence and recommendations for prosecution directly to the Attorney General for action; compensation to be provided not only by the perpetrator but also by the state, as this is a right of the victims; participation of family members during exhumations; provide for the creation of a forensic experts unit to efficiently and effectively carry out the DNA testing; and strong victim and witness protection program.