

# BRIEFING PAPER

FEBRUARY 2020

# FAKE TRANSITIONAL JUSTICE CONSULTATIONS

HOW LONG CAN THE GOVERNMENT FOOL VICTIMS?



ADVOCACY FORUM  
Baluwatar-4  
Kathmandu, Nepal  
Tel: 01-4432309/4425561  
[info@advocacyforum.org.np](mailto:info@advocacyforum.org.np)  
[www.advocacyforum.org](http://www.advocacyforum.org)

# **BRIEFING PAPER**

**FEBRUARY 2020**

## **FAKE TRANSITIONAL JUSTICE CONSULTATIONS**

**HOW LONG CAN THE GOVERNMENT FOOL VICTIMS?**



**ADVOCACY FORUM**

**Fake Transitional Justice Consultations:  
How Long Can the Government Fool Victims?**

**(February 2020)**

Copyright © Advocacy Forum-Nepal

*Publisher*

Advocacy Forum-Nepal

Lamingtan Marga, Baluwatar-4

Kathmandu, Nepal

P.O. Box: 21798

Tel: # 01- 4425561/4432309; Fax: 01-4432309

[info@advocacyforum.org.np](mailto:info@advocacyforum.org.np)

[advocacyforumnepal@gmail.com](mailto:advocacyforumnepal@gmail.com)

[www. advocacyforum.org](http://www.advocacyforum.org)

Cover design & Layout: Kishor Pradhan

## TABLE OF CONTENTS

<b>List of abbreviations</b>	4
<b>Executive summary</b>	5
<b>Background</b>	7
<b>Issues of concern</b>	9
‘Fake consultations’	9
Agenda for the consultations	11
Hasty and ill-considered consultations	12
No transparency	12
Increasing mistrust of the Government among victims and civil society	12
Problematic approach in selecting the participants	13
Window dressing	13
No independent facilitator	14
No clarity how and where information from consultation is going to be used	15
<b>Dubious role of the NHRC</b>	16
<b>Annex 1:</b> Summaries of ‘consultation’ process per province	18
<b>Annex 2:</b> Summaries of concerns raised by stakeholders	20
<b>Annex 3:</b> Summary of good practice standards	22

## LIST OF ABBREVIATIONS

AF	Advocacy Forum-Nepal
AG	Attorney General
APF	Armed Police Force
AWC	Accountability Watch Committee
CIEDP	Commission of Enquiry on Enforced Disappearances
CPA	Comprehensive Peace Agreement
CPN-UML	Communist Party of Nepal (Unified Marxist-Leninist)
CVCP	Conflict Victims Common Platform
CVNA	Conflict Victims National Alliance
DGAO	District Government Attorney Office
FNJ	Federation of Nepalese Journalists
HGAO	High Government Attorney Office
HRD	Human Rights Defender
HURON	Human Rights Organization of Nepal
ICJ	International Commission of Jurists
ICCPR	International Covenant on Civil and Political Rights
INSEC	Informal Sector Service Centre
MOLJPA	Ministry of Law, Justice and Parliamentary Affairs
NA	Nepal Army
NHRC	National Human Rights Commission
TJ	Transitional Justice
TRC	Truth and Reconciliation Commission
UNHRC	United Nations Human Rights Committee
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UPR	Universal Periodic Review

## EXECUTIVE SUMMARY

This briefing documents the flawed ‘consultations’ that the Government organized in 7 provinces on 13 January 2020 apparently in an attempt to legitimize its move to appoint new commissioners for the Truth and Reconciliation Commission (TRC) and Commission of Enquiry on Enforced Disappearances (CIEDP) through a controversial appointment committee. It seeks to alert stakeholders about the harm this may cause in achieving victims’ right to truth, justice and reparation. It also aims to encourage actors, mainly the international community, not to fall for the false narrative trap that the Government and political parties are trying to create, especially in light of the upcoming Universal Periodic Review (UPR) of Nepal in November 2020.

Although the Government had the opportunity to bring the transitional justice (TJ) process back in track, unfortunately, once again it has chosen not to do so, but instead to reinforce impunity. The consultations were done in haste, without much transparency and clarity, giving no time for victims to prepare, with some victims deciding to disengage from the process.

After these fake consultations, the Government swiftly proceeded to appoint new commissioners on 18 January 2020, but without amending the law. This takes us back to square one, where

Nepal was in 2014. At that stage, the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) had written to the Government of Nepal publicly about its inability to support these commissions established under the Commission of Enquiry on Disappearances, Truth and Reconciliation Commission Act 2014, many sections of which violate Nepal’s international obligation.

This briefing is not an analysis of the deepening TJ crisis in the country but a factual note of two recent developments, the appointment of the commissioners through the controversial Recommendation Committee and the ‘consultations’, which civil society and victims have termed as ‘fake consultations’. It assesses whether the ‘consultations’ were in line with good standards referenced in a 2009 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), called *National Consultations on Transitional Justice*,<sup>1</sup> and a 2016 report by the UN Special Rapporteur on the promotion of truth, justice, reparation and

<sup>1</sup> OHCHR, ‘RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES. National consultations on transitional justice’ (2009), [https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf).

guarantees of non-recurrence.<sup>2</sup> A summary of the pre-conditions for success of national consultations on TJ mechanisms drawn from these two documents, their operational challenges as well as their contribution to the legitimacy of transitions is included in Annex 3.

---

<sup>2</sup> [https://www.ohchr.org/Documents/Issues/Truth/GA\\_TJ\\_en.pdf](https://www.ohchr.org/Documents/Issues/Truth/GA_TJ_en.pdf).

## BACKGROUND

Nepal's TJ process has been stalled for years because of a lack of political will to provide justice to victims and uphold the rule of law. There have been sustained efforts by the political parties to maintain the status quo that harbors impunity and keeps them above the law. Despite repeated court rulings<sup>3</sup> and calls from victims and civil society (both national and international),<sup>4</sup> no progress has been made to implement court rulings, respect international standards and take seriously to the demands and aspiration of victims and society at large. Because of repeated lies and acts of betrayal and behind-the-doors conspiracy against a genuine TJ process, victims and civil society are deeply demoralized.

The two TJ commissions, the Truth and Reconciliation Commission and Commission of Enquiry on Enforced Disappearances (CIEDP) were established in 2015 amid clear warnings

of their likely failure. The law to establish them was passed at midnight, under strict party whips, without any parliamentarian being able to comment, let alone victims and civil society being given a chance being consulted. This was a clear signal that the political parties did not want the commissions to succeed. It is alleged that the law was passed to buy time; stall ongoing court cases related to past crimes and/or divert them out of the criminal justice system into the TJ process.<sup>5</sup>

As predicted, the Government allowed the mandate of the first set of commissioners to lapse in February 2019. The TRC had completed preliminary investigations in less than 10% of the complaints and the CIEDP had commenced preliminary investigation in 75% of complaints at the time of the expiry of their tenure. Neither had resolved even one case out of the more than 60,000 complaints lodged by victims.

Although the end of the mandate of these commissioners once again provided an opportunity for the Government and the political parties to bring the TJ process on track, they repeated the same mistakes at high cost to public funds,

<sup>3</sup> Suman Adhikari et al v Government of Nepal, Writ No 0058/0057 of the Year 2069 B.S, Suman Adhikari et all vs. Prime Minister and Cabinet of Minister et all, Writ No 070-WS-0050.

<sup>4</sup> Amnesty International, the International Commission of Jurists (ICJ), Human Rights Watch, and TRIAL press statement of 29 July 2019; ICJ, Amnesty International, Human Rights Watch and TRIAL International, press statement of 26 November 2019, <https://www.hrw.org/news/2019/11/26/nepal-13-years-no-justice-conflict-victims>, Accountability Watch Committee (AWC), press release of 9 July 2019, <http://advocacyforum.org/downloads/pdf/press-statement/2019/awc-statement-on-tj-process-english.pdf>

<sup>5</sup> Advocacy-Forum Nepal 'Briefing Paper on The State of Transitional Justice in Nepal', Published in February 2019, <<http://www.advocacyforum.org/downloads/pdf/publications/tj/af-briefing-paper-february-2019-english.pdf>>.



refusing to take corrective measures. Despite efforts by the victims and civil society through repeated press statements, meetings and public calls for a consultative process to develop a genuine TJ process, the political parties chose secrecy, conspiracy and resorted to divide and rule games to maintain the status quo.

On 25 March 2019, the Government appointed the Recommendation Committee chaired by former Chief Justice Om Prakash Mishra provided for under the law to recommend new commissioners. Victims, civil society and international actors expressed grave concern about the lack of impartiality, independence and transparency in the existing procedure for the appointment of the commissioners.<sup>6</sup>

---

<sup>6</sup> See, for instance, Joint letter of Special Procedures, 12 April 2019, [https://www.ohchr.org/Documents/Issues/Truth/OL\\_NPL\\_1\\_2019.pdf](https://www.ohchr.org/Documents/Issues/Truth/OL_NPL_1_2019.pdf)

## ISSUES OF CONCERN

For TJ efforts to be effective, they must be grounded in international human rights standards. Above all, they must be human rights-based: consistently focusing on the rights and needs of victims and their families. A human rights-based approach to TJ demands in-depth consultation with affected communities. The Commission on Human Rights, in its resolution 2005/70, stressed “the importance of a comprehensive process of national consultation, particularly with those affected by human rights violations, in contributing to a holistic transitional justice strategy that takes into account the particular circumstances of every situation and in conformity with international human rights standards.”<sup>7</sup> For example, the UN Secretary-General has stated that, “the most successful transitional justice experiences owe a large part of their success to the quality and quantity of public and victim consultation carried out.”<sup>8</sup> However, the January 2020 consultations with the affected community failed to meet the good practices as identified by the UN in many respects. Summary notes of the

‘consultation’ per province and per stakeholders are included in Annex 1 and 2 respectively.

### ‘FAKE CONSULTATIONS’

As victims and civil society, both national and international, repeatedly urged the Government to organize genuine consultations on the TJ process, the Government organized consultations on 13 January 2020 in all 7 provincial headquarters with conflict victims and other stakeholders, including civil society. The victims’ associations and civil society were waiting for the Government’s plan for consultations for several months, but in the end they were given three days’ notice only.

The Ministry of Law, Justice and Parliamentary Affairs (MOLJPA) developed the ‘Modality for Consultation with Stakeholders before the parliament amends the Truth and Reconciliation Commission, Commission on Investigation of Enforced Disappeared Persons’ Act 2014’. After repeated unfulfilled promises, on 17 September 2019, the Ministry had informed the victims about the Government’s plan of organizing consultations in all provinces on the same day, inviting around 80 people from different background including from the army and police. However, at that stage, victims were not told the date for such consultations. On 6 January 2020, after months

<sup>7</sup> Office Of The United Nations High Commissioner For Human Rights, ‘RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES National consultations on transitional justice’ (2009), [https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf), p.1.

<sup>8</sup> “Report of the Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies” (S/2004/616), para 16.

of no progress, the Conflict Victims Common Platform (CVCP) handed a Memorandum to Pradeep Kumar Gyawali (Minister, Ministry of Law, Justice and Parliamentary Affairs/Ministry of Foreign Affairs) calling for meaningful, victim-centric consultations and measures that ensure that suggestions obtained from the consultation process will be included in the language of the law to be amended.

*It would be prudent to revise the Enforced Disappeared Enquiry and Truth and Reconciliation Commission Act 2014 after holding wide deliberations with the concerned individuals. But the same mistake has been repeated. There was neither deliberation nor transparency when it came to appointing new members. The Act, too, has not been amended yet. There was no introspection on the failure of the previous commission officials. The consultations held in the name of collecting feedback for amendment were mere bogus attempts to show that the government talked to stakeholders before the amendment. It seems the only aim of the political leadership is to ensure all charges against them are quashed.* Sushil Pyakurel, former human rights advisor to the President of Nepal, 4 February 2020, Kathmandu Post interview.

Then, in the evening of 9 January 2020, the government suddenly announced 13 January as the date for the consultations following a modality that victims and civil society had opposed. The two main victims' networks, the CVCP and the Conflict Victims National Alliance (CVNA) and a number of others, such as the Nepal Maoist Victims Organization, Association of Widows of Deceased Security Personnel during the Conflict, etc. got a letter through email in the evening of 9 January, asking them to nominate victims, not

exceeding 5 victims per province, to represent the group at the consultations that were going to take place simultaneously in all 7 provinces on 13 January.

One day before the consultation, victims' organizations received details of the venue for the consultations. Outraged by being deceived, the CVCP decided not to engage with this consultation process, other were confused what to do but in the end joined anyway. CVNA said it would follow a critical engagement policy and participate in the consultations on that basis.

It is not known how the Government chose whom to invite from civil society. The Accountability Watch Committee (AWC) decided not to engage as they found this process repeated the same mistakes from the past and was organized simply to tick a box, not to listen to victims and civil society in a real sense. AWC repeated its demands for the dissolution of the Recommendation Committee to create an environment for consultations, not to go for consultation unless there is a clear plan and to providing enough time for victims and civil society to prepare.<sup>9</sup>

Despite all this opposition from victims' groups and civil society, the government went ahead and organized provincial consultations in Biratnagar, Janakpur, Hetauda, Pokhara, Butwal, Surkhet and Dhangadhi on 13 January 2020. In each province, consultations were held in two sessions.

In most of the provinces, the first session began at around 10 am and went up to 1 pm. The representatives of the civil society and other stakeholders including Nepal Police, Nepal Army, Office of the Attorney General, Members of District and High Court Bar Associations and

<sup>9</sup> AWC press statement of 26 September 2019 on 'Modality for Consultation'.

Local Government representatives were invited to the second session, which took place from 2 pm to 4 pm. Thus, each group had 2-3 hours, with each participant having not more than 3 minutes to speak.

In all the provinces, government officials from MOLJPA commenced the consultation meeting by setting out the objectives of the programme as follows:

- ☞ To consult with stakeholders and victims separately before drafting a bill (third amendment) of Truth and Reconciliation Commission, Commission on Investigation of Enforced Disappeared Persons' Amendment bill to be drafted as per the suggestions obtained from the consultation meeting.
- ☞ To draft a bill in accordance with the Supreme Court verdict and international practices.
- ☞ This discussion is the beginning more consultations to be held in days ahead.

In some provinces<sup>10</sup> all the victims who participated in the first session stayed for the second session (i.e. consultation with stakeholders/civil society), while in some others victims walked out from the meeting, citing dissatisfaction over the consultation process.<sup>11</sup> They refused the lunch offered to them by the organizers.

In all the provinces, members of CVCP and CVNA handed over memoranda with their demands and concerns to the organizers indicating their dissatisfaction over the process.

### AGENDA FOR THE CONSULTATIONS

Previously, the Ministry had indicated that the consultation with stakeholders would be based on

an open-ended questionnaire.<sup>12</sup> However, instead a list of the following 12 thematic issues put together by the Ministry was circulated to the attendees for discussion on the day:

1. Categorization between gross violations of human rights and human rights violations during the armed conflict
2. Jurisdiction, powers, functions and duties of the Commissions
3. Investigation of the complaints related to incidents during the armed conflict
4. Standards, basis and limitations for reparation
5. Scope, basis and nature for mediation
6. Standards, basis and limitation for amnesty
7. A court to hear and decide on cases related to war crimes, its formation and jurisdiction
8. The statute of limitation on human rights violations cases recommended for prosecution by the Commissions
9. Punishment of human rights violations cases, punishment according to the nature of crime and other possible action against perpetrators
10. Withdrawal of cases related to war-crimes
11. Handing over property of people disappeared during the armed conflict to the rightful claimant
12. Miscellaneous

The list of topics on the surface seemed to cover most of the issues on which the victims and civil society had demanded consultation. However, victims felt it was a joke to expect inputs on that list from a gathering of up to 60 victims or more, given that only 3 minutes were allocated for each participant to cover all 12 topics, with no prior information about the subjects. Civil society

<sup>10</sup> Victims participating in Province 1.

<sup>11</sup> Victims participating in Province 2.

<sup>12</sup> 'Modality for Consultation with Stakeholders before the analysis of the draft bill (third amendment) of Truth and Reconciliation Commission, Commission on Investigation of Enforced Disappeared Persons' by Ministry of Law, Justice and Parliamentary Affairs (MOLJPA).

representatives commented that the list said much about the thinking behind the consultations, with the topics clearly pointing in the direction of creating a framework to avoid accountability.

Thus, victims and civil society claimed that the consultations were done only to show to the international community (possibly during the UPR) that Nepal has made progress on TJ and to let the problematic Recommendation Committee go ahead to nominate the commissioners as instructed by the political parties. Thus, victims and civil society termed the consultations as ‘fake consultations’. Below are set out the concerns and reasons for this conclusion.

### **HASTY AND ILL-CONSIDERED CONSULTATIONS**

International best practice warns against hasty consultations since they risk being ill considered and, to the extent that they are perceived as tokenistic, can adversely affect public perceptions of the value of TJ. However, against the very essence of consultation, the Government decided to do consultations in all 7 provinces on the same day without making the agenda public in advance.

### **NO TRANSPARENCY**

Best practice on consultations highlights the importance of transparency in the consultation process. The people to be consulted need to have the necessary information and understanding so that they can express informed viewpoints. They need to be aware of the TJ options open to them. Best practice also calls for tailor-made sensitization programmes.

Most prominent victims’ groups decided not to participate considering the lack of sufficient advance information and time for them to prepare. Victims were informed three days prior to the consultations to send 5 representatives to the

provincial level consultations. Some districts were not even able to send one victim, as there was not enough time to coordinate among various victims groups, let alone giving opportunities for the victims at the community level to discuss their joint positions before the victim attending the ‘consultation’ left for the provincial headquarter.

Groups to be consulted will always require information about the precise purpose of the consultations, so that they are less likely to have false or unrealistic expectations of the outcomes. Managing expectations is particularly important if the fundamental elements of the TJ framework are already in place. AF documented that in all provinces those attending the consultations had no idea about the government fixed 12 agenda items on which the victims and other stakeholders were expected to provide their views and perspectives.

There were neither planning meetings nor prior consultations with civil society. AWC, which had been calling for wider consultations, decided to disassociate itself from the process suspecting that it was done so hastily with ill intent, merely done to tick the box than to genuinely listen to victims and other stakeholders. Although victims were told that they could send their questions and concerns to the Ministry, no mailing address was provided.

### **INCREASING MISTRUST OF THE GOVERNMENT AMONG VICTIMS AND CIVIL SOCIETY**

Consultation processes, if designed with a genuine wish could strengthen relationships among TJ constituencies. Providing a platform for shared experiences and needs on the one hand, and common values and principles on the other, can contribute to the general strengthening of

civil society, ultimately essential for redress, reconciliation, and hence prevention.<sup>13</sup>

However, in all the provinces, victims had placards showing their dissatisfaction with the way the whole issue was handled by the Government. In Province 2, the victims walked away in the middle of the consultations and refused to even have lunch offered by the organizers, although many had traveled a long distance and were hungry. Victims who participated in the consultations complained and expressed publicly that they had very little confidence that this consultation was genuine and could lead to meaningful outcomes.

In a previous briefing, AF highlighted factors that were contributing to the increasing mistrust of the Government among victims and civil society and urged for the Government to bridge this mistrust if the TJ process had to succeed.<sup>14</sup> Unfortunately, the recent ‘consultations’ seem to have further deepened the mistrust between the Government and victims and civil society.

### **PROBLEMATIC APPROACH IN SELECTING THE PARTICIPANTS**

One of the main aims of consultation is to elicit the views of, and thereby include, those most affected by past violations and abuses. This often includes individuals who are rarely consulted, such as victims subject to multiple forms of victimization, discrimination and marginalization.<sup>15</sup>

<sup>13</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Seventy-first session (24 October 2016), p. 2, [https://www.ohchr.org/Documents/Issues/Truth/GA\\_TJ\\_en.pdf](https://www.ohchr.org/Documents/Issues/Truth/GA_TJ_en.pdf)

<sup>14</sup> Advocacy-Forum Nepal ‘Briefing Paper on The State of Transitional Justice in Nepal’ (February 2019), <http://www.advocacyforum.org/downloads/pdf/publications/tj/af-briefing-paper-february-2019-english.pdf>, p.6

<sup>15</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Seventy-first session, 24 October 2016, p.1, [https://www.ohchr.org/Documents/Issues/Truth/GA\\_TJ\\_en.pdf](https://www.ohchr.org/Documents/Issues/Truth/GA_TJ_en.pdf)

The consultation should make sure that women are not disregarded when the voices of victims are sought. In the case of Nepal some children, were both victims and perpetrators and needed to be consulted.<sup>16</sup> For this matter, victims groups and the civil society organizations were calling for consultations targeting specific clusters of victims such as women affected by sexual violence and torture, ex-child soldiers, ethnic minorities such as Tharu victims who suffered the most from enforced disappearances.

The consultations were centered in the provincial headquarters, with barely one victim per each district of each province able to participate.

Although different victims’ groups such as the Maoist Victims Organizations, groups representing widows of Police and Army personnel killed during the conflict were invited for the consultations, no attention was paid to the issues of women and other vulnerable groups and the sensitivity required for discussing some of the issues important to them. In Province 5 (Butwal), victims expressed their disappointment toward the government’s invitation extended to conflict victims’ representing various conflict victims’ network only. They contended that conflict victims who are not associated with any networks or groups had not been invited. After a heated discussion, the organizers had allowed a number of victims (who were not associated with any conflict victims’ networks but had turned up) into the meeting. Furthermore, all those representatives of the Government and political party representatives that were invited as the panel to speak and facilitate the consultations were mostly men (see Annex 1).

<sup>16</sup> Binod Ghimire, ‘Former child soldier files petition at UN Human Rights Office demanding justice’, The Kathmandu Post, Available at: <https://kathmandupost.com/national/2019/06/07/former-child-soldier-files-petition-at-un-human-rights-office-demanding-justice-20190607191754>

## WINDOW DRESSING

In terms of the critical issue of the timing, consultations should ideally take place ahead of the conception and design of TJ measures. Consultations are not one-off events, but require more systematically the establishment of on-going processes of communication.<sup>17</sup>

However, victims and civil society perceived these consultations as window dressing, rushed through to provide legitimacy and give the go ahead to the problematic Recommendation Committee that the Government had established to recommend the commissioners.

After the four years' tenure of the commissions ended without being able to conclude a single case, victims and civil society organizations encouraged the Government and the political parties to take that as an opportunity to bring the TJ process on track and win the confidence of victims and society at large. However, instead of listening to the calls of victims for whom the Government claims these commissions are supposed to be working, the government decided to form the Recommendation Committee to appoint the chairmen and members of the TRC and CIEDP. Without any discussions, plan or preparation, the meeting of the Council of Ministers on 21 March decided to form this committee to recommend the commissioners for the commissions under the same old Act, which the Supreme Court had found unconstitutional.

The Recommendation Committee itself was seen as lacking in independence. The media widely covered the background of the members coming from different political parties. For example, Ram

Nath Mainali represented the former CPN (Maoist Centre), Prem Bahadur Khadka is close to the Nepali Congress while Sharmila Karki represents the former CPN-UML.<sup>18</sup> All these parties have an interest to avoid a genuine TJ process because of their role during the conflict.

As most human rights defenders and other potential highly qualified candidates for the Commissions would not apply and join the commissions unless the Act is amended in line with the Supreme Court orders, victims' groups and civil society organizations asked the Recommendation Committee not to recommend the names but to recommend to the Government to listen to the concerns and grievances of victims and civil society and go for public consultation.<sup>19</sup> Despite all these recommendations and advice from victims, the committee waited for a green signal from the parties and on 18 January 2020 recommended the people whom the political parties had agreed and wanted them to recommend.<sup>20</sup> As

<sup>18</sup> Binod Ghimire, 'Human rights body to pull out of committee formed to select transitional justice commission officials', The Kathmandu Post, Available at: <https://kathmandupost.com/national/2019/09/08/human-rights-body-to-pull-out-of-committee-formed-to-select-transitional-justice-commission-officials>

<sup>19</sup> On 9 July 2019, AWC released a press statement, appealing to the Recommendation Committee not to recommend the names prior to the amendment of the TRC Act, in line with the decision of Supreme Court and international standards.

<sup>20</sup> See, Nepal Monitor, 'Doubt over justice as panel moves to select TJ officials', Nepal Monitor, Published on: 19 November 2019, Available at: <https://www.nepalmonitor.org/reports/view/26726>; See, Memorandum handed on 4 August 2019 to National Human Rights Commission by Conflict Victim National Alliance (CVNA); Press Statement released on 26 September 2019, 12th January 2020 by Accountability Watch Committee (AWC); Memorandum handed on 6 January 2020 to Pradeep Kumar Gyawali (Minister, Ministry of Law, Justice and Parliamentary Affairs/Ministry of Foreign Affairs) by Conflict Victims' Common Platform (CVCP); See, for instance, Himalayan Times, 'Ten office bearers nominated for transitional justice bodies', 19 January 2020, <https://thehimalayantimes.com/nepal/ten-office-bearers-nominated-for-transitional-justice-bodies/>; See also, Binod Ghimire, 'Conflict victims condemn parties for bulldozing decision on transitional justice appointments', Kathmandu Post, <https://kathmandupost.com/national/2020/01/18/conflict-victims->

<sup>17</sup> The Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH or GIZ' Using a Systematic Communication Model to optimise "Nationally Determined Contributions" Stakeholder Dialogues (2016), p. 7, [https://www.ctc-n.org/sites/www.ctc-n.org/files/resources/stakeholder\\_dialogue\\_manual\\_2\\_0.pdf](https://www.ctc-n.org/sites/www.ctc-n.org/files/resources/stakeholder_dialogue_manual_2_0.pdf)

victims and civil society were calling for the withdrawal of the NHRC's participation from the Recommendation Committee and there were no consultations, the Government arguably organized the consultations a week earlier to save the face of the Recommendation Committee.

### **NO INDEPENDENT FACILITATOR**

In all seven provinces, the MOLJPA organized the consultation meeting in coordination with the Provincial Ministry of Internal Affairs and Law. Among them were some who had been Maoist leaders during the armed conflict. All but one of them were men.<sup>21</sup>

It is important that the entity in charge of the consultations is objective and unbiased so that it can act impartially in relation to crucial dimensions of consultation processes, including the selection of participants, the determination of the agenda, methodology, venues and reporting. Victims have called repeatedly for any consultations to be documented by experts whom victims trust.<sup>22</sup> However, the consultations were completely controlled by the Ministry, which did not even invite those civil society activists working in the TJ field to participate in the morning session with victims.

### **NO CLARITY HOW AND WHERE INFORMATION FROM CONSULTATION IS GOING TO BE USED**

While a report of a consultation could be in numerous forms, it must always be true to the views that have been expressed. As a general rule, reports should be published, translated into local languages and distributed appropriately.

However, there is no clarity how and where the information gathered during the recent 'consultation' is going to be used. The victims have articulated views in a number of issues, which are important for the amendment of the law, the appointment process and the future course of the TJ process more generally. Similarly, those who served in the security forces and government agencies have also expressed their perspectives and expectations from the process. Civil society members who participated have also raised some concerns. These views of different stakeholders expressed during the consultations are presented in Annex 2.

In all provinces, the organizers failed to summarize the issues that were raised. So victims have doubts as to how their inputs would be included in any report. The Ministry had assured the victims that similar consultations would be organized in Kathmandu before the amendment bill is finalized. However, at the time of writing, there were news reports that the Ministry of Law and Justice was "giving final touches to a bill" to amend the TRC Act. An undersecretary at the ministry is quoted to have said that "[t]he ministry is working on the amendment draft based on feedback received from the provinces" and that "the winter session of Parliament will endorse it."<sup>23</sup>

---

condemn-parties-for-bulldozing-decision-on-transitional-justice-appointment

<sup>21</sup> There was a woman facilitator in Province 5.

<sup>22</sup> Press Statement released by CVCP on 22 September 2019.

---

<sup>23</sup> Kathmandu Post, 'Law ministry starts drafting transitional justice law amendment without victims onboard', 4 February 2020, <https://tkpo.st/2twpQ7K>



## DUBIOUS ROLE OF THE NHRC

In a meeting (three days prior to the consultation) with AWC members and victims, the NHRC Chairperson in the presence of Prakash Wasti, the NHRC member representing the NHRC in the Recommendation Committee had stated that its staff would be observing the process. However, the NHRC representatives were not just observing but actively participated in the discussions. This gave legitimacy to the process.<sup>24</sup>

In the views of victims and civil society, the NHRC also played a dubious role in the Recommendation Committee. It is alleged that its representative failed to protect the interests of victims and respect international human rights standards. As civil society and victims requesting the Government not to appoint commissioners without amending the law and taking measures to remedy the problems that made the first commissions fail.

<sup>24</sup> In Province 1, NHRC participated in the process only as an observer. In Province 2, a NHRC representative urged the government to implement the recommendations made by them. In Province 4, NHRC representatives stressed the need to end impunity and to ensure protection of victims. In Province 5, Samjhana Sharma (Head, NHRC-Province 5) stressed the fact that consultation should be organized in other districts of the province as well (and not just limiting to Butwal), as Province 5 is one of the most affected regions during armed conflict. In Province 7, representative of NHRC mentioned that they have been pressurizing the government to promptly implement the recommendations. In Province 6, there were no NHRC representatives present.

They also requested the NHRC not to join the Recommendation Committee, as the law requires, unless the law is amended respecting the order of the Supreme Court.

However, the NHRC Chairperson repeatedly told members of the civil society and victims that the NHRC representative's role would be to protect the interest of the victims and civil society and not to let the perpetrators decide everything. However, over time, the Recommendation Committee had to wait for political instructions about the names the committee was recommending. Thus, the civil society again requested the NHRC to call its representative back. As the political interference in the Recommendation Committee became of wider concern and the media having several reports, representatives of AWC met with the NHRC Chairperson and Commissioner Prakash Wasti (NHRC representative in the Recommendation Committee) a couple of times. AWC members were assured that the NHRC would pull its member back as this was also undermining the credibility of the NHRC.

However, despite such promises, Prakash Wasti continued to function as a member of the committee. Victims once again called on the NHRC to call its member back to protect the integrity of the NHRC and the interest of the

victims. When the Recommendation Committee was just seen as a rubber stamp and to give legitimacy to the appointment of the people that political party leaders wanted to bring to the commission, the NHRC chair told in a public event in Dang organized by a human rights organization of Nepal (HURON) that he had already instructed his colleague Wasti to leave

the committee but he was dismayed to see his colleague's continuous engagement. The chair does not seem to have taken any action against Prakash Wasti for working against his instructions. The media has reported that Wasti is on leave since the recommendation committee recommended the names of the commissioners.<sup>25</sup>

---

<sup>25</sup> Binod Ghimire, 'Prakash Osti runs into controversy for his nod to transitional justice nominations', Kathmandu Post, 24 January 2020, [https://kathmandupost.com/national/2019/09/08/human-rights-body-to-pull-out-of-committee-formed-to-select-transitional-justice-commission-officials\\_](https://kathmandupost.com/national/2019/09/08/human-rights-body-to-pull-out-of-committee-formed-to-select-transitional-justice-commission-officials_)

## ANNEX 1: SUMMARIES OF 'CONSULTATION' PROCESS PER PROVINCE

### PROVINCE 1

Min Bahadur Biswokarma and Rajendra Prasad Gautam (Members of the House of Representatives) were invited for the first session. Along with conflict victims, members of provincial assembly, the Chief Attorney, NHRC representatives, High Court Bar Association (Biratnagar), Federation of Nepalese Journalists (FNJ), District Government Attorney Office (DGAO), High Court Attorney Office (HGAO), Armed Police Force and Nepal Army attended the second half of the consultation meeting. Hikmat Kumar Karki (Minister for Internal Affairs and Law of Province 1) chaired the second session.

### PROVINCE 2

Since no invitation was extended to human rights organizations in Province 2, Udaya Shah (Provincial Coordinator, CVCP) listed down the names of representatives of different human rights organizations in the official letterhead of CVCP and requested the concerned authority to ensure their participation. Altogether 30 conflict victims and representatives from different human rights organizations signed the petition for their participation in the process. After that, representatives of human rights organizations were invited and all participated in the first session. Jitendra Dev (Member of the House

of Representatives) was also invited to the first session. Joint Secretary, MOLJPA chaired the session. Representatives from the NHRC, Bar Association, DGAO, HGAO, Armed Police Force and Nepal Army attended the second half of the consultation meeting. However, civil society members and human rights organizations were not allowed in the second session.

### PROVINCE 3

Mahesh Basnet, Ramesh Lekhak and Shalikram Jammakattel (Minister for Internal Affairs and Law of Province 3) were invited for the first session. Basnet, Lekhak and Jammakattel stated that they were unaware of this consultation process; hence they were not fully prepared for it. The first session began at around 10am and went up to 1.30pm. Around 50 victims participated.<sup>26</sup> A number of government officials from federal and provincial law ministry and political leaders spoke first from the panel in the first session. Victims were allotted time to put forward their concerns. However, the list of issues for discussion was only distributed at around 12pm. Therefore, victims could not express their thoughts and opinion clearly and effectively on the matter. The organizer mentioned that if victims have further queries and

<sup>26</sup> Tentative number of participants: CVNA-5, single women-16, CVCP-24, Maoist victims-5.

suggestions on the issue, then they could send it via email within one week.

Victims displayed placards and chanted slogans showing their dismay over the consultation process as they were not given any time to prepare and put forward their concerns and alleged that the ‘consultation’ was done just to claim it was done rather than to listen to what victims had to say.

Some victims stayed back for the second section but mainly representatives from media, Nepal Police and Nepal Army participated in that.

#### **PROVINCE 4**

Somnath Adhikari and Minendra Rijal (Members of the House of Representatives) were invited for the first session. Mohan Regmi, Kumar Khadka and Chandra Bahadur Buda (members of the Provincial Assembly), representatives from NHRC, Nepal Bar Association, FNJ, NGO Federation of Nepal, INSEC, DGAO, Nepal Police, Armed Police Force and Nepal Army attended the second half of the consultation meeting.

There was a large police presence inside and outside the venue. Although only conflict victims were supposed to participate in the first session, some unarmed security personnel (in uniform) stayed throughout the first session. Some victims reported that they felt intimidated with such police presence. Victims were not allowed to participate in the second session.<sup>27</sup>

#### **PROVINCE 5**

Conflict victims and representatives from victims’ networks attended in the first session. However, Sujita Shakya (Member of the House of Representatives) and Bhoj Prasad Shrestha

(Member of the Provincial Assembly) were also invited for the first session. Kul Prasad KC (Minister for Internal Affairs and Law, Province 5) chaired the session. Altogether 45 participants attended the first half of the consultation meeting. Along with conflict victims, representatives from NHRC, Nepal Bar Association, FNJ and human rights organizations attended the second half of the consultation meeting. Altogether 35 participants attended the second half.

#### **PROVINCE 6**

Ram Narayan Bidari and Badri Prasad Pandey (Member of National Assembly) were also invited for the first session. In the absence of Naresh Bhandari (Minister for Internal Affairs and Law, Province 6), Birendra Kumar Yadav (Secretary, Ministry of Internal Affairs and Law, Province 6) chaired the session. Altogether 45 participants attended the first session. Along with conflict victims, members of Provincial Assembly, representatives from High Court Bar Association (Surkhet), District Court Bar Association, NGO Federation of Nepal, FNJ, DGAO, HGAO, Armed Police Force, Nepal Police and Nepal Army attended the second session.

#### **PROVINCE 7**

Attahar Kamaal Musalman (Member of House of Representatives) and Khimlal Devkota (Senior Advocate) were invited for the first session. Prakash Bahadur Shah (Minister for Internal Affairs and Law, Province 7) chaired the session. Altogether 63 participants attended the first half of the consultation meeting. Along with conflict victims, another 20 people, including the Chief Attorney, government officials from other ministries, representatives from District Court Bar Association (Kailali), Nepal Police, Armed Police Force and Nepal Army attended the second half of the consultation meeting.

<sup>27</sup> Victim, Province 4.

## ANNEX 2: SUMMARIES OF CONCERNS RAISED BY STAKEHOLDERS

AF has documented the following points being raised by different stakeholders during the consultations.

### VICTIMS

One of the major concerns that victims had raised was lack of transparency in the process. They were not receiving sufficient information and were not informed on time about the necessary preparation. Many of them asked ‘what input could we provide in 3 minutes on all those important subjects?’<sup>28</sup>

Victims also questioned the modality of the ‘consultation’ process. ‘Consultation process in such haste is nothing but a mere formality (and a conspiracy to fool the international community for upcoming UPR process).’ Many victims stressed the view that the government had not been serious to secure justice for victims till date.

They demanded consultation programmes at the district level so that all victims can have an equal opportunity and platform to express their concerns. They further recommended that the TRC Act needs to be amended as per victims demands, respecting Supreme Court judgments and international human rights standards, that those responsible should be prosecuted and

victims of conflict need to see such prosecutions, that no statute of limitation should be introduced for human rights violations, that amnesty in all cases will not be acceptable and that victims’ consent for reconciliation is necessary.

Their demand also included the appointment of commissioners after the amendment of the Act. They highlighted that to create an environment for victims for public hearing, social dignity and social security of victims needs to be restored and they need reparation, a victim identity card and government jobs for their security. They also asked for assurance of transparency of decisions and recommendations made by the Commissions and their implementation. They demanded to include experts in the commissions and the need to include victims injured by explosives during the conflict under the definition of conflict victims and to hand over properties of the disappeared to the rightful claimants.

### SECURITY FORCES

Most of the representatives from Nepal Army and Nepal Police stated that amnesty should be granted to acts done with ‘good intention’. Amnesty and mediation should be prioritized in the spirit of the Interim Constitution and the Comprehensive Peace Agreement (CPA). Those prosecuted under the Army Act should also be considered as having

<sup>28</sup> Victims from Province 6, Province 4 and Province 5.

served their sentence and victims of such cases should receive reparation.<sup>29</sup> There are lawyers and HRDs advocating for justice for victims, but nobody advocates for the concerns of deceased security personnel during the conflict-era. Memorialization is necessary.<sup>30</sup>

Some (security personnel and party representatives) also expressed that those directing the crimes are now in power while they themselves are exposed to threat of prosecution for following their orders.<sup>31</sup> If the killing was done intentionally then the person should be made accountable for his/her conduct. If any other act is done for the benefit of the institution then such activities should be viewed differently and provided amnesty and pardon.

One APF member stated that during the armed conflict, there was no practice of handing arrest warrant before an arrest was made.<sup>32</sup> All the activities conducted during armed conflict were done as per Chapter 4 of the then Armed Police Force Act, 2058. However, in the present context, charges have been pressed against individuals for conducting activities as per the Act.<sup>33</sup>

## GOVERNMENT REPRESENTATIVES

Other stakeholders such as the representative of the Attorney General Offices and Bar Association stated that taking statement of people in high position is a difficult task.<sup>34</sup> Thus, for the investigation of conflict-era cases, legal experts and former government attorneys need to be appointed.<sup>35</sup> They called for a Special Court to deal cases related to war crimes. Statute of limitation should not be introduced for such conduct.<sup>36</sup>

<sup>29</sup> Major General, North West Division, Nepal Army, Province 6.

<sup>30</sup> Deputy Inspector General of Police, Province 7.

<sup>31</sup> Major General, Mid-West Division, Nepal Army, Province 5.

<sup>32</sup> Province 4.

<sup>33</sup> Province 4.

<sup>34</sup> District Attorney, DGAO, Province 6.

<sup>35</sup> HGAO, Province 6.

<sup>36</sup> Police Inspector, Province 7.

Concerns of both sides should be heard and addressed while ensuring justice.<sup>37</sup> State should provide equal treatment to conflict victims of both sides.<sup>38</sup>

There were also complaints about not having sufficient information or the draft bill. If the draft of the bill was distributed to attendees, they could have provided their suggestions likewise.<sup>39</sup>

## Civil society

Prominent Human Rights Defenders (HRDs) and civil society leaders did not participate in the consultation. Local civil society representatives presented in the events raised the question of transparency. It was noticeable that some were invited, some were not and how they had been selected was not clear. There was not enough time to have discussion on any of the 12 identified subjects. HRDs were dismayed over the planning of the ‘consultation’ and stated that it could have been meaningful if the issues for discussion had been provided to participants beforehand and if experts and those working in this field would also have been invited. HRDs raised the issue of appointment of independent and impartial Commissioners. They raised the problematic definition of conflict victims in the existing Act and highlighted the need to include victims of sexual violence, disabled people and others. They spoke about the need to have proactive implementation of UN Security Council Resolutions 1325 and 1820 and the need to take measures to ensure non-repetition of such incidents. They also highlighted the need to remove provisions of “amnesty” and “withdrawal of cases” from the Act and from the bill. Government should review best international practices for conflict management

<sup>37</sup> Province 4.

<sup>38</sup> Nepal Army, Province 7.

<sup>39</sup> DGAO, Surkhet.

## ANNEX 3: SUMMARY OF GOOD PRACTICE STANDARDS

### I. NATIONAL CONSULTATIONS: WHAT THEY ARE AND WHY THEY MATTER

- A comprehensive process of national consultations is a crucial element of the human rights-based approach to TJ, as the United Nations has frequently emphasized.
- People who have been affected by past oppression or conflict need to be able to freely express their views, in a secure environment, so that the TJ programmes can identify and take account of their experiences, as well as of their needs and entitlements. A careful process of consultations will also ensure that there is a strong sense of local ownership of and promote stakeholder participation in the TJ programme. Moreover, consultations can benefit the design of specific aspects of TJ programmes, reignite stalled or slow-moving peace processes and trigger important debates in the community.
- National consultations need to be distinguished from outreach activities. They are not one-way information or public relations exercises, but instead are a form of profound and respectful dialogue whereby the consulted parties are able to freely express themselves with a view to shaping or enhancing the design of TJ programmes. Consultations should also

be distinguished from the discussions and debates that occur as a substantive part of a TJ programme.

### II. NATIONAL CONSULTATIONS AS A HUMAN RIGHTS LEGAL REQUIREMENT

- The right to be consulted can be identified in a number of human rights instruments. It is covered by Article 25 of the International Covenant on Civil and Political Rights, guaranteeing the right of every citizen to take part in the conduct of public affairs, Article 12 of the Convention on the Rights of the Child, regarding respect for the views of a child, and Principle 35 of the Updated Set of Principles for the protection and promotion of human rights through action to combat impunity.
- To enjoy the right to be consulted, a wide range of related human rights need to be implemented, such as freedom of expression, assembly and association.
- The design and implementation of TJ processes must respect and promote the fundamental dignity of every human being, based on the principles of equality and non-discrimination on the grounds of race, colour, gender,

language, religion, opinion, national or social origin, property, birth or other status.

### III. THE FOCUS OF NATIONAL CONSULTATIONS

- A well-designed national consultations exercise must take account of the forms of TJ that are envisaged for a country: the design of criminal justice-related consultations may look very different from, and be more limited than, those preceding a non-judicial exercise.
- While care must be taken to consider TJ mechanisms that have been identified beforehand, e.g., in a peace agreement, the consultation process should be open to TJ possibilities that were not originally envisaged.

### IV. THE FORM OF THE CONSULTATIONS

- The consultations that preceded or coincided with early TJ initiatives were almost all qualitative, i.e., taking place in the form of workshops, seminars, community meetings and other forms of organized debate while using classical qualitative research techniques such as focus groups, in-depth interviews and participant observation. Since then, various forms of quantitative methodologies have also been used, most commonly surveys. The quantitative and qualitative approaches are not mutually exclusive and many data-gathering exercises integrate both approaches.

### V. PREPARING THE WAY FOR CONSULTATIONS: THE IMPORTANCE OF SENSITIZATION

- It is crucial that the people to be consulted have the necessary information and understanding of the TJ options open to them, of the specific context of the consultations, and of the specific purpose of the consultations, so that they can express informed viewpoints and do not

have false or unrealistic expectations of the outcomes.

- While sensitization work should refer to the experience of other countries in order to inform consultees about the relative strengths and weaknesses of different TJ mechanisms, it also needs to emphasize that national programmes of TJ have to be tailored to the specific circumstances of the situation.
- Sensitization efforts should make use of all relevant languages, including indigenous languages and local dialects, and should be prepared to explain the technical terminology of TJ and of law to the consultees. However, it is important to distinguish between technical terms and terms on which the consultation experts wish to seek the consultees' views.
- Sensitization can be achieved through mass dissemination in newspapers and the broadcast media or by way of local means such as drama and roleplay. It should be monitored by specialists to avoid such consequences as re-traumatization.

### VI. WHEN TO CONSULT?

- The circumstances prevailing in a country will determine the form and scale of the consultations, and the impact of their outcome. Consultations will be most productive if conducted in times of relative peace and security and when the relevant communities are accessible over reasonable periods of time.
- In times or locations of ongoing armed conflict, efforts to undertake consultations need to take account of the impact of the prevailing climate of fear or intimidation, and need to cope with impeded access to the relevant communities as well as insecurity. The consultations



themselves may even exacerbate the risk to individuals and communities, for instance, by gathering people in dangerous locations or by encouraging them to express views that may draw hostile attention.

- It is useful to periodically conduct consultations during the implementation of a TJ programme, with a view to recalibrating it and enhancing its impact by structural adjustments.
- Preliminary piloting activities may be useful, in particular for large-scale national consultations, as they might lead to adaptations and improvements of the consultation methodology.

## VII. WHERE TO CONSULT AND FOR HOW LONG?

- The location of the consultations depends on their precise objective. A localized approach may be appropriate if the goal is to hear the views of a particular community or category of victims. Broad, countrywide consultations also have merit, including when they seek the views of communities that may not have been directly affected by a conflict. A preliminary mapping exercise, taking account of previous conflict patterns, can assist in determining the locations where consultations should take place.
- Venues for consultations should ideally be neutral. Places which are directly or symbolically linked to the previous conflict, such as army or police buildings, government or religious buildings and crime sites, should be avoided. It is prudent to choose the venues and the precise timing of events in consultation with local representatives of victims or the other stakeholders.
- The duration of a consultation will depend on its purpose and scale, as well as on such considerations as access and security. Short processes help maintain a tight focus and avoid fatigue or loss of motivation among consultation personnel. Longer consultation processes, on the other hand, may facilitate acceptance of the process on the part of consultees, a maturation of their viewpoints and an ongoing refinement of methodologies.

## VIII. WHO SHOULD CONDUCT THE CONSULTATIONS?

- It is best for the consultations to be conducted by independent experts who do not have any organizational or political stake in specific TJ outcomes.
- National human rights institutions may play an important role in the conduct of national consultations as they can provide reassurance that the process will be conducted on the basis of human rights standards and with respect for the rights and dignity of the consultees.
- Frequently, international NGOs, academic institutions and others conduct consultations. Wherever possible, these international groups should work with and through appropriate national and local groups, thereby respecting the local social infrastructures, drawing on relevant expertise and facilitating a transfer of skills.
- The United Nations, in particular OHCHR and the human rights components of peacekeeping missions, frequently assists States in designing and conducting national consultations. It does so in support of national initiatives and capacities without seeking to influence consultation findings. Nor does it generally

associate itself with particular views expressed in any consultative exercise.

- It is crucial to coordinate consultation exercises so that they are conducted in an efficient and targeted manner, avoid duplication, best address gaps, and do not overly burden consulted groups and individuals.
- Regardless of which institution or organization undertakes consultations, it is imperative that it should retain suitably qualified expert personnel. Its staff needs to be fully trained in all technical aspects of their work as well as concerning any cultural or religious sensibilities that may arise. Special skills and training are required for consultations with women and children.
- Another group of victims that has been overlooked in many TJ consultations is children. Only recently have consultation exercises started to pay attention to their viewpoints. Children should be approached only by specially trained personnel and the principle of the best interest of the child should be kept at the forefront. Every effort must be made to avoid re-traumatizing children or to convey to them any sense that they themselves are responsible for the problems of their country or for finding the solutions.
- Account also needs to be taken of the voices of those civil society groups that either represent victims or otherwise convey their concerns and demands. It is important, however, to ensure that victims' groups really represent the victims' views.

#### **IX. WHO SHOULD BE CONSULTED?**

- National consultations should involve all the key stakeholders, including victims and witnesses of past patterns of abuse and oppression, women, children, as well as those who are outside the country, as refugees, emigrants or exiles.
- Women are sometimes disregarded or consulted inadequately or inappropriately, for instance, by or in the presence of men. The consultation of women should be undertaken by women, without haste and with full respect for the confidentiality of individual views, while also taking account of the stigmatization that may be associated with having been subjected to sexual violence. A well-designed consultation process should also be predicated on the considerable extent to which women are the moulders, guardians and agents of change in their communities.
- Other stakeholders may include civil, traditional and religious leaders, political representatives, national human rights institutions, professional organizations, the media, trade unions and the business community, the security forces, including the police and army, other former combatants, educationalists and academics, or diplomatic missions, representatives of international organizations and the donor community.
- Stakeholder views may be expressed in other contexts than direct consultations, such as in peace conferences, debates in the media, parliament and workshops. Consultations can also consider the findings of international human rights monitoring bodies.

## **X. ADDITIONAL PROTECTION CONSIDERATIONS DURING THE CONSULTATIONS**

- Consultations should be undertaken in a manner that demonstrates respect for the dignity of victims and others affected by human rights violations. They should be conducted with a sense of propriety and in a manner that is culturally sensitive to local conditions. Consultation experts should conduct themselves in culturally appropriate ways, heeding local conventions regarding such issues as diet, dress and behaviour.
- Every possible measure should be taken to avoid exposing individuals or communities to undue risk, such as the publicization of their particular views. Specific attribution of views must be on the basis of a clear agreement with regard to privacy and confidentiality.
- An enabling and protective national legal environment for consultations must be in place, ensuring that people are not at risk of prosecution for anything they might say.

## **XI. REPORTING ON CONSULTATIONS**

- The report of a consultation exercise must always be true to the views that have been expressed; any additional analysis and editorializing need to be carefully considered.
- Principles of accountability suggest that such reports should, as a general rule, be published.

It will generally be correct to at least deliver specific findings, or some other form of summary feedback, to those who have been consulted.

- Publication is not appropriate if a report would release partial or possibly misleading findings or if there are reasons to suspect that findings have been manipulated or tampered with.
- Reports should take account of the capacities of the recipients, and therefore should be translated into local languages and distributed appropriately.

## **XII. FOLLOW-UP TO NATIONAL CONSULTATIONS**

- Results of consultations should be taken into very serious account. However, they should not tie the hands of the decision makers. This is consistent with the human right of participation, which requires that views should be taken into account in a conscientious and respectful manner but does not carry with it the expectation that those views will be acted on.
- Even if consultations are not acted upon, they can constitute valuable sources of information about the capacity and the willingness of communities to undertake reconciliation and rehabilitation, as well as about the assistance they need in that regard. As such, they are important for policymakers in general and development actors in particular.