

Two years achievement of Commission of Investigation on Enforced Disappeared Person and Truth and Reconciliation Commission: Mere Complaint Collection

The Commission of Investigation on Enforced Disappeared Person (CIEDP) and the Truth and Reconciliation Commission (TRC) (herein after 'the commissions') were established with an objective to investigate the cases of human rights and humanitarian law violation during the armed conflict of Nepal in order to seek the truth, provide reparation to victims, ensure justice and guarantee its non-repetition. However, the two year mandate of the commissions is concluding without any significant achievement. Conflict victims and human rights groups express their serious dissatisfaction towards the failure of the commissions to fulfill their mandated objectives.

Established to ensure transitional justice (TJ), the two year mandate of the commissions will end on 2073/10/26 (8 February 2017). Still the commissions have failed to focus on crucial aspects including truth-seeking, identifying perpetrators of grave offenses, recommending reparation to victims, studying the nature and pattern of serious human rights violations and providing recommendations on institutional reform. Till date, the commissions have only conducted the preliminary task of collecting complaints and have failed to prepare a clear workplan and roadmap. As a result, the conflict victims and their relatives, who have been struggling for justice for decades, feel dejected and have lost hope of obtaining justice.

The conflict victims, human rights organizations/groups, civil society organizations and National Human Rights Commission (NHRC) have frequently urged the government to formulate Acts and rules in accordance to judicial precedent and directives issued in various cases by the Supreme Court regarding transitional justice. The United Nations and other international human rights organizations repeatedly recommended enacting the Act and rules in line with the Supreme Court decision and international standards. Furthermore, they have suggested forming the commissions adopting transparent and reliable procedures. The fact that the law had been formulated ignoring the aforementioned concerns is evident to us. Therefore, the victims' groups were unable to trust the commissions and the NHRC, human rights groups as well as United Nations and wider international community did not accredit nor collaborate with them.

It is clear that the commissions have been formed as a mere formality and to exhaust the victims instead of honestly addressing the conflict period cases. It is further apparent from the fact that the government did not implement the Supreme Court orders and recommendations provided by NHRC and UN Human Rights Committee regarding TJ rather it appointed and promoted the accused of grave human rights violations in security forces, political parties and public posts without vetting. There is no doubt that such situation has occurred due to a lack of will on the part of the government and the commissions to provide justice to conflict victims, end impunity and establish sustainable peace.

Even after their formation, there was no attempt from both commissions to adopt victim-centric procedures, win the trust of stakeholders, and create an environment of cooperation and ownership. The commissions did not have enthusiasm or sensitivity to cooperate and collaborate with or utilize the information, evidence, documents, experience, expertise and infrastructure of NHRC, UN and other human rights bodies and organizations. The Truth and Reconciliation Commission (TRC) had prepared case shelving criteria without consulting conflict victims and stakeholders. Therefore, the victims had filed a writ before the Supreme Court, wherein the Court yesterday, on 2072/10/19 (1 February 2017), ordered to nullify the erroneous case shelving criteria. Victim friendliness of the commissions can be gauged from the fact that the victims had to file a case against the commissions, which is primarily formed to address the victims' concerns.

The victims filed the petition to test the Commissions granting the benefit of doubt, even in the face of intimidations, threats, lack of adequate information and difficult situation. The government has not created a favorable environment where the victims and witnesses could fearlessly express their agony and present the evidence against alleged perpetrators. The commissions lacked clear and effective work plan regarding investigation, truth finding, public hearing and reconciliation of the cases. Consequently, security threats to numerous victims who have filed the complaints have increased. The victims have not been able to get information about what the commissions have been doing for months after collating complaints. The victims are not hopeful that the commissions would ensure justice and truth finding given that the commissions are confused regarding the execution of their mandate, therefore, a serious question is raised about their acceptance and collaboration with them.

In its two years tenure, the commissions have not even attempted to conduct truth seeking, reconciliation and social integration in respect of any of the grave offences. Likewise, any recommendation regarding reparation to victims has not been made public yet. The anticipation of the conflict victims and human rights community have been affirmed with the ineffectiveness of the commissions, controlled by the government and regulated by a faulty Act, to properly investigate the cases and establish lasting peace. Consequently, the victims have been left in the cold.

What was the work mandate and expectation to be executed by the commissions, what work did the commission executed in reality, what were its overall achievements, its accountability and justification? Such questions have been instinctively raised. The commissions are under oath to address the cases of conflict period bearing crucial national and public responsibility, therefore they should conduct self-evaluation regarding their work execution, and how far they have been able to meet the expectations and ensure rights of the victims, therein bearing accountability. However, this has not been done.

For successful conclusion of this process, first and foremost the previous erroneous Act should be amended and secondly effective new law should be formulated. The stakeholders have continuously appealed for the amendment of the Act in line with established precedent in an acceptable manner. On 2073/08/03 (18 November 2016), the conflict victims and human rights community submitted recommendations for amendments of the Act to the Prime Minister, legislative parliament, social justice and human rights committee of the parliament, ministry concerned, NHRC and related commissions. It primarily focused on the Comprehensive Peace Accord, international law, and principle of jurisprudence, Supreme Court's decision and recommendation of the NHRC.

The victims and human rights group strongly demand the Nepal Government and political parties to immediate amend the Act in order to gain the trust of and address the concerns of the stakeholders.

Likewise, we vigorously demand to establish skilled, accountable, independent, fair and trustworthy commissions equipped with necessary resources. Also, it should ensure coordination and cooperation of stakeholders concerned and guarantee participation, ownership and consultation with/of victims.

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