

**Position of the Conflict Victims Agreed Upon During the National Consultation on
Mandamus of the Supreme Court of Nepal on Transitional Justice and Concrete Roadmap,
Organized on 21 March 2024**

Appoint the commissioners in Commission for Investigation of Enforced Disappeared Persons and Truth and Reconciliation Commission through the formation of a credible and autonomous committee and by adopting an open, consultative and transparent process only after the acceptable amendments of the Transitional Justice Act!!!

1) The Supreme Court of Nepal on 12 March 2024 has released the full text of the mandamus order on transitional justice issued on 29 January 2024. The Court has ordered the government to form a recommendation committee for the appointment of the Commissioners in the Commission of Investigation on Enforced Disappeared Persons and Truth and Reconciliation Commission within a month. Additionally, the Apex Court has ordered Office of the Prime Minister and Council of Ministers to make necessary arrangements for the preliminary investigations after the secretaries of both the commissions form a taskforce for this purpose within 15 days. The formation of the taskforce is to be done by the secretaries in consultation with the representatives of the group of victims of armed conflict and it is to guarantee the victims' right to truth and justice.

2) Conflict victims have a serious concern regarding the mandamus of the Supreme Court. The government and the political parties have been apathetic to the voices raised by the conflict victims ever since the Supreme Court's mandamus to the government to amend the faulty TJ Act in 2015. The government and the political parties have not shown seriousness in making the TJ commissions successful and these commissions have been dysfunctional in lack of the commissioners since June 2022. The Supreme Court issued the mandamus due to the government's delaying tactics.

3) Going through the Supreme Court's mandamus, it transpires that the court has ordered the government to form the recommendation committee in line with the legal provision incorporated in the Bill to amend Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act 2014 (TJ Bill) under deliberation in the federal parliament. The victims will not accept any attempt of the government to misinterpret the court's order and unilaterally proceed with the existing Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act (TJ Act) without necessary amendments. Amendment proposals for arrangement of recommendation committee as demanded by the conflict victims are under discussion in the parliament. Victim community and civil society have taken serious exception to the dominance of government representatives in the recommendation committee and the non-transparent selection process. Victim community has pressured the government to address this issue by amending the provision.

4) The Supreme Court has mentioned in its order that international human rights law has provided every person the right to a fair hearing by an independent court of law and Nepal's Constitution has also enshrined this right as the fundamental right. The Court has reminded the government that it is the responsibility of the State to protect and guarantee conflict victims' right to justice. The order mentions that the lack of appointment of commissioners in the transitional justice (TJ)

Commissions has obstructed TJ process to reach a logical conclusion and has also prevented the upholding of victims' rights. The court order has pointed to the fact that the tendency of responsible government agencies to be indifferent to the orders and the rulings of the Supreme Court has undermined rule of law and made a mockery of democracy.

5) Commissioners in the first TJ Commission formed in 2015 demanded that the TJ Act needs to be amended to extend the tenure of the commission. The government did not amend the Act and deceived the victims. Victim community and stakeholders strongly demanded to amend the Act through an acceptable process and then form credible commissions. But the government did not hear the victims' demands. The government said that it would amend the Act and form the commission simultaneously. It also formed a recommendation committee. But the recommendation committee under political influence conducted a mere show of consultation with the victims. It did not implement the suggestions to make the selection process credible and transparent. The commissions were formed for the second time but credible amendment process was not moved forward. The victim community had put the precondition of amending the law and they did not engage with the commissions in lack of the necessary amendment. The United Nations also stuck to its position of not extending any assistance to the commission unless the law was amended. Consequently, the commissions could not function. The commissioners wasted their time in frequenting the ministry and top leaders' homes to amend the law rather than doing the commissions' works.

6) The government started the Act amendment process in March 2022 but it is not concluded even after two years. With the elections for the new parliament in November 2022, the government tabled the amendment bill in the parliament on 9 March 2023 but there are no indications that it will pass even after more than a year. The amendment bill was discussed in the sub-committee of the Law, Justice and Human Rights Committee of the federal parliament and it contains many positive provisions as demanded by the victims. But there are still some issues to be addressed in the TJ bill. The victims had believed that the bill will pass from the parliamentary committee on 4 March 2024. But it did not happen. TJ Act has been made a bargaining chip for power games and it is now deliberately being kept in limbo. This is a great betrayal to conflict victims. The government shows that it has consulted with the victims but the consultation is not meaningful. The government does not implement the victims' concerns expressed in consultation meetings but uses these consultations to fulfil its own interests. We take strong exception to such tactics of the government.

7) The victim community is adamant in its demand to form credible commissions only after the amendment of the existing TJ Act. The victim community has not been able to engage with the commissions because the government has not amended the Act credibly. We have serious differences with the formation of the recommendation committee under the existing Act. The victim community takes exception to the controlled selection process implemented by the recommendation committee tainted with political influence. We have been demanding the change in the structure of the recommendation committee, guarantee of the independence and autonomy of the recommendation committee and freedom from political interference. The victim community

has been repeatedly demanding the selection of commissioners through a clear standard and a credible and transparent process.

8) The victim community has been conveying its concerns on amendment of the Act and the controversial provisions in the Act and the bill to the Prime Minister, Ministers, Parliament, Parliamentary Committee and political leaders. TJ process has become a victim of political games and we reaffirm our position that amendment of the law is the first precondition to take the TJ process to a logical conclusion.

The commissions will form a taskforce and start preliminary investigations

9) The Supreme Court's order mentions that Section 31 of the TJ Act has provided for the commissions to form different sub-committees or taskforces by incorporating subject experts to proceed with the activities. Section 34 of the Act provides for the commissions to delegate certain authority to the Chairman, Member Secretary or the sub-committee or taskforce formed under Section 31. But the commission cannot delegate the authority to facilitate reconciliation or recommend reparation, amnesty or legal action. The Court found that the commissions had not formed sub-committee or taskforce and had not delegated any authority following the decision of the officials. The Court mentions that it cannot issue an order to carry out the commission's activities through the officers as the commission's investigation is related to the sensitive issue of transitional justice and the commission has to appoint an investigation officer or a taskforce to carry out detailed inquiry and it has to make various recommendations which cannot be delegated to the officers. The Court further made a point that issuing such an order is not in line with the law and it also goes against the spirit and norms of transitional justice that demands TJ commissions to be independent, competent and autonomous.

10) The existing TJ Act does not provide for the commission secretary to form a taskforce and delegate it the authority to commence the preliminary investigation in absence of the commissioners. To realize this, there is a need to remove barriers as provided by Section 42 of the Act. The decisions to determine whether an act constitutes human rights violation or not, whether the case should be comprehensively investigated or not, whether it should be put on hold, and what kinds of reparation are to be recommended can be taken only after the preliminary investigation. This investigation is important as it serves as the main basis of determining the process after the filing of a complaint. The Act governing the commission has given authority to the commissioners to start preliminary investigation. The collective rights of commissioners to facilitate reconciliation or recommend amnesty or legal action cannot be delegated to a single secretary. Therefore, making a short-term measure in the absence of commissioners is necessary. Barriers should be removed to ensure that there is no long-term negative impact on the commission's activities, no working difficulty for the commissioners, no discord between commissioners and the secretariat, and no harm to the autonomy and independence of the commission.

11) Victim community and civil society organizations have been saying that the commission under the secretary in the absence of the commissioners needs to keep working for victims' benefit. Responsibilities for classification of the complaints, establishing reasons for the conflict, conducting necessary investigation for the empowerment of the commission, enquiring about the ordinary cases, identifying duplicated complaints, providing immediate relief and remedies for the

victim community, studying and preparing for reparation needs, and archiving of the complaints among others can be delegated to the secretary and the taskforce. While the formation of a task force by the secretary and the initiation of preliminary investigations is a temporary measure, it can play an important role in preparing a conducive working environment for the future commissioners. The commission could begin some preliminary tasks through the secretariat to expedite its functions. Nevertheless, for a definitive, sustainable, and trouble-free solution, the only viable course of action is to immediately move forward with the establishment of an autonomous commission through amendments of the law. We would like to caution against attempts to mislead victims by compelling the secretary to take action without amending the law, thereby sidestepping the task of establishing the commission.

Amend the Act Immediately, Initiate a Credible Recommendation Committee and Commission Formation Process

12. A solid framework for victim-centered transitional justice must be developed so that victims of serious human rights violations can receive effective remedies. A clear roadmap and concrete action plan for victim-centered solutions to the transitional justice process should be made.

13. The TJ Bill pending in the Parliament's Law, Justice and Human Rights Committee for almost 10 months should rise above political prejudice and stratagem. It is clear that if the top leadership of the political party have a strong will to find a solution, the law will be passed by the parliament immediately. While remaining accountable to the sensitivity of the suffering of the victims, the bill must be passed immediately in an acceptable manner by addressing the unresolved questions within the committee as well as concerns raised by the victims' community. This should be done in accordance with the orders of the Supreme Court on various dates, international norms, and the demands of stakeholders, including victims. These actions must be undertaken in a manner that invites acceptance and cooperation from conflict victims, the human rights community, and the international community, including the United Nations.

14. The independence and autonomy of the formation, structure and selection process of the recommendation committee to be formed for the selection of officers of the commission should be ensured. The formation and selection process of the committee as provisioned in the previous Act should be amended. In order to make the process of selection and recommendation of officials in the commission credible, an independent committee should be established by adopting the guiding principles issued by the Supreme Court in 2013, the Paris Principles, the standards set by the United Nations as well as other international standards. Individuals with proven experience, competence, and contributions in peace-building, as well as those equipped with clear plans for the successful implementation of transitional justice processes, should be selected through a transparent and public selection process. The recommendation committee must be granted full authority to establish clear criteria and conduct the selection process transparently, free from any interference by political parties.

15. Individuals possessing expertise in human rights and transitional justice, devoid of any party influence and pressure are essential. They must demonstrate an understanding of the complexities of politics and human rights while also acknowledging the pain, sensitivities and questions of conflict victims. They must be able to work together in a group and have a good social image. They must be impartial, independent, professional, qualified, reliable and having fair personalities. Individuals who have expertise in the relevant subject and who are not swayed by the influence of political parties, who have a judicial mind that can rise above party interests, should be chosen.

Furthermore, they must exhibit victim-friendly and gender-sensitive attitudes, along with the ability to collaborate effectively within teams. Strong communication and managerial skills are crucial, as is the capacity to earn the trust, cooperation, and support of stakeholders, including conflict victims, the human rights community, political parties, and international entities such as the United Nations. Lastly, it is imperative to select individuals with impeccable moral character and a strong social reputation, untainted by direct or indirect involvement in any aspect of the conflict. They should possess exemplary leadership qualities to effectively move the process forward. A public hearing should be held while selecting the officers of the commission. During the public hearing, the committee should select an individual who has received high marks through the presentation of comprehensive plans, emphasizing transparency, effective communication of information, and collaboration with stakeholders, particularly victims. This individual must be able to undertake the responsibilities outlined in the law, which encompass resolving approximately 66,000 pending complaints within the commission and upholding principles of truth, justice, reparation, and institutional reform.

16. The Commission should be granted autonomy concerning its commissioners and office bearers, manpower, resources, and structure. Necessary resources, including personnel, experts, budget, resources, cooperation and other essentials required for the completion of its tasks must be determined. The Commission should be empowered to autonomously manage and utilize these resources to effectively carry out its mandate.

17. Each unit within the Commission should be staffed with subject matter experts relevant to its functions. The research unit should comprise research experts rather than ordinary employees. Additionally, an effective and accessible commission structure, centred around victims, should be established at the provincial level and in areas most affected by conflict to facilitate outreach to victims.

18. The working approach of the commission should be made victim-friendly and gender-sensitive according to the concept of transitional justice. It should ensure reliability, confidentiality, and security throughout its processes. Reliable measures should be adopted for the confidentiality and protection of victims and witnesses, and for the protection of evidence. Moreover, the Commission should demonstrate sensitivity to the emotional needs of victims, prioritizing their trust and well-being. Psychosocial counselling services should be made available to support victims during their engagement with the Commission.

19. For those injured or disabled as a result of conflict or due to explosives laid underground post-conflict, their life-altering damages must be thoroughly assessed. Based on the assessment, interim relief, percentage determinations, and arrangements for livelihood should be promptly provided. Immediate assistance including relief, treatment, social security, aid materials, and urgent medical care for needy victims must be provided. Identification, security, immediate relief as well as treatment of victims including victims of torture and sexual violence must be ensured. Collaborating with the victim community is important to establish a comprehensive reparation policy and programme. This initiative must address the immediate and long-term needs of victims, considering both common challenges and unique circumstances faced by individuals. Additionally, it is essential to take into account the nature, severity, and specific requirements of their suffering. This policy should aim in ensuring that reparative needs and rights are met effectively which is the common obligation of both central and state government.

20. Although some initial works can be initiated by the secretary, taskforce, and staff, the process

of forming an autonomous commission should be started immediately by amending the law for a reliable and legal solution, and the TJ Bill pending in the parliament, should be passed in line with the mandate of the Supreme Court, international standards and the demands of victims and stakeholders. We strongly request that it be passed immediately in a credible and acceptable manner, with provisions of formation and structure of the recommendation committee, and reliable, independent and transparent selection process of the commissioners. Likewise, we appeal the Prime Minister and the Council of Ministers, the Parliament, Parliamentary Committee, the Nepali Congress, CPN (UML), CPN Maoist, and other political parties in the parliament to ensure the process of forming a recommendation committee based on the provisions of the amended Act, and to immediately start the process of amending the existing TJ Bill in the Parliament in accordance with the mandate of the court, without political pressure, bias, and political interference, and by being accountable to the sensitivity of the suffering of the victims.

21. In addition, the civil society, media, the United Nations and the international community should appeal the government, parliament and political parties to facilitate in concluding Nepal's stalled transitional justice process and address the concerns of the conflict victims in a more responsible, active and creative manner. We would like to reaffirm that merely forming a taskforce without amending the law will not lead to a sustainable long-term solution. History has shown that commissions without legal backing have failed to achieve their objectives. Pursuing this path would only result in wasted time and resources, further victimization of those affected, and heighten the distrust in the government among the victim communities.

Conflict victims participating in the National Consultation

1. Niranjan Kumar Chaudhary, Bardiya
2. Ganesh Bahadur Malla, Kailali
3. Balkrishna Shrestha, Parsa
4. Rajeshwari Sharma, Kailali
5. Jamuna Rokka, Okhaldhunga
6. Tulasi Bahadur Khadka, Ramechhap
7. Lila Devi Tamang, Morang
8. Kriti Chaudhary, Kailali
9. Shital Singh Rathaur, Surkhet
10. Shanti Dhakal, Surkhet
11. Hira Tiwari (Sharma), Nuwakot
12. Kumar Sharma, Kathmandu
13. Ram Kumar Rai, Dhankuta
14. Kalpana Bhandari, Nuwakot
15. Shankar Kumar Buda, Ramechhap
16. Ganesh Bhandari, Makwanpur
17. Prabal Rana, Kathmandu
18. Sabita Shahi, Kalikot
19. Netra Bhandari, Humla

20. Krishna Rawat, Humla
21. Ram Lakhan Jayswal, Kapilvastu
22. Dharmaraj Neupane, Accham
23. Suman Adhikari, Lamjung
24. Sanjay Kumar Gupta, Rupandehi
25. Kalyan Budathoki, Ramechhap
26. Rupesh Shah, Sunsari
27. Gopal Bahadur Shah, Bardiya
28. Phadindra Luitel, Okhaldhunga
29. Devi Khadka, Dolakha
30. Geeta Rasaili, Kavre
31. Uday Kumar Sha, Siraha
32. Kshitij Chaudhary, Bardiya
33. Chandrakala Upreti, Banke
34. Radhika Bhattarai, Tanahun
35. Shiva Kumar Budathoki, Ramechhap
36. Kalpana Bhandari, Ramechhap
37. Bimal Wagle, Ramechhap
38. Rabindra Thapa, Ramechhap
39. Ramesh Wagle, Ramechhap
40. Nagma Mali, Lalitpur
41. Maina Karki, Jajarkot
42. Sushila Chaudhary, Dang
43. Sita Kaini, Tanahun
44. Dudhraj Adhikari, Kaski
45. Radha Kumari Saud, Kailali
46. Bhojraj Timilsina, Accham
47. Chiranjibi Bas Giri, Dhanusha
48. Krishna Jung Singh, Bajhang
49. Kopila Adhikari Balami
50. Surendra Khatri, Myagdi