

THE PEACE THROUGH JUSTICE PROJECT

Implemented by

THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS-NEPAL

EVALUATION REPORT

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TABLE OF CONTENT

1. EXECUTIVE SUMMARY.....	3
2. INTRODUCTION	6
3. OBJECTIVE OF EVALUATION.....	8
4. METHODOLOGIES.....	8
5. MANAGEMENT AND FINANCE	9
6. ACHIEVEMENTS ON OUTPUTS.....	11
7. OVERALL RESULT ACHIEVED.....	17
8. CHALLENGES AND LESSON LEARNED.....	19
9. CONCLUSIONS AND RECOMMENDATIONS	21
10. THE WAY FORWARD.....	24
ANNEX I. ACRONYMS AND ABBREVIATIONS	
ANNEX II. VOICE OF VOICELESS	
ANNEX III. LIST OF QUESTIONNAIRE	
ANNEX IV. TOR	
ANNEX V. DRAFT WORK PLAN Ptj	
ANNEX VI. LIST OF PERSONS CONTACTED	
ANNEX VII. LIST OF DOCUMENTS REFERRED	

1. EXECUTIVE SUMMARY

The Comprehensive Peace Agreement (CPA) of November 21, 2006 formally ended a decade of armed conflict in Nepal between the state security forces and the CPN (Maoist). With the end of the conflict that resulted in 16,000 plus deaths, more than 1,300 disappearances and displaced hundreds of thousands of the population and victimized more others, the CPA spoke of a 'new Nepal' promising a set of transitional mechanisms to take forward political, social and economic transformation with an acknowledgement that it is necessary to address past violations of international human rights and humanitarian law.

Along with the CPA, the Interim Constitution of Nepal 2007 also makes constitutional provisions for the formation of the TRC. This is a provision that links the peace process with strengthening of justice, foundation for a sustainable peace, reinvigoration of the rule of law and promotion of respect for human rights. It also provides for the formation of a separate Commission of Inquiry to investigate cases of disappearances made during the conflict and provide relief and reparations to the families of the victims on the basis of the report of the Commission. It also makes the State responsible to make arrangements for appropriate relief, recognition and rehabilitation for the families of those who died and for persons disabled and injured during the conflict; and to conduct special programs to rehabilitate the displaced persons, provide compensation for damaged private and public property, and rebuild infrastructure destroyed during the conflict.

These commitments, in different language and implementation timeframe have been reaffirmed in different agreements and understanding between the major political parties and the Maoists. However, none of the commitments have been fully materialized as yet.

In this connection, the Peace through Justice Project launched by OHCHR with support from the UN Peace Fund (UNPFN) has been a timely move to advance the TJ initiative in the country embracing the basic international norms, standards and values. Various partners and approaches were adopted to focus on different disciplines, actors and geographical coverage of the programming. Since the momentum of the project coincided with the proper timing of the discourse for TJ in Nepal, the PtJ project's implementing agencies envisioned the programs in both opportune and challenging fashions. The organizations were found notable for their ability to mobilize quickly the public opinion on transitional justice. The more successful these organizations have become, and the broader the agendas they have pursued, the more contests they are faced with due to dramatically formed political consensus among political parties in contrary to their series of commitments and promises in favour of rendering justice to the victims. After a number of significant successes, including the improvement of the bills on TRC and CoI-D, the desired progress envisioned through the project has somehow come to a halt due to the recent development on politics of appeasement, compromise and reluctance among political actors in rendering justice to the victims thereby forming an ever complicated scenario.

The goal of the PtJ project was to strike the right balance: establishing accountability and seeking justice with its clear direction and priorities without stifling the flexibility that is so central to its success with dedicated activities on addressing the causes, conduct, and consequences of the armed conflict. While PtJ project's mission is expansive, the executing organizations have focused on successfully amplifying the voice of the victims that blood

money compensation alone is not the right way to achieve peace and reconciliation. For this, the activities under the PtJ project entailed developing, coordinating, and implementing integrated national and local level campaigns involving public education and communication, research, coalition-building, litigation, and advocacy for legislative reform. Over the past three years, these efforts have led to several significant successes both at policy-making and community levels.

At the policy level, the PtJ project successfully heightened all aspects of a multi-faceted, multi-layer campaign that culminated in the reformed draft bills on TRC and CoI-D and if passed in the parliament, those bills are expected to serve as ground-breaking tools to secure justice and curbing impunity. The other success at the national level has been the constructive engagement with parliamentarians, political party leadership and other concerned actors designed to raise awareness of the fact that TJ mechanism must enshrine the component of justice in order to end the culture of impunity, secure lasting peace and reconciliation. Another success is the establishment of the TJ Resource Centre, first of its kind in Nepal –to promote informed discourses around transitional justice, although there are daunting challenges to strengthen and sustain it at least until the TJ mechanisms are set up. The products of mapping exercise are also key results which have systematically organised information on the conflict, offering a good basis for the TJ mechanisms to start their work. The PtJ project activities played a key role in directing a campaign that showed how a national and international consensus against the problem of impunity is growing without any concession to impunity.

At the community level, the PtJ project activities have been instrumental in reshaping reconciliation discourse by putting the problem of impunity and victims' rights to seek justice on the spotlight. Beyond the issue of justice and reparation, the project activities also maintained an active roster of broader-based dialogues, advocacy, training and educational work among local institutions. The executing organizations at local level often pursued the media to report on cases those were either neglected or unreported for a variety of reasons. The intervention from the project executing organizations contributed to lead visible changes in the public perception about transitional justice. At a time of erosion on public enthusiasm, such shift was possible due to the increased local discourse about the rights of victims, justice and compassion. Some organizations were focusing more narrowly on unconditional reconciliation and fewer organizations were open to supporting broader TJ components and such a contrary school of thoughts and rapidly-changing political environment meant that advancing the TJ campaign would only become more riskily challenging.

With a complete roadmap in hand, the strategies under the project have been achieved with clear implications for almost every aspect of the projects' areas of intervention. The PtJ project also needed to be purposeful about staying in touch with key stakeholders and potential partners, in order to ensure that the momentum created in favour of accountability, will remain alive. The UN has to pay more attention to development and its long-term campaign sustainability even after the exit of the OHCHR. Although some civil society alliances have taken on those responsibilities and begun to dedicate significant time to them, the shift from being in the thick of day-to-day activities to working on longer-term issue of TJ will not always be easy. The Nepali CSO alliances' attempt to create pressure to the government and political parties to entail zero tolerance to impunity and blanket amnesty deserves support from all quarters.

Irrespective of the size of the grant awarded to majority of the organizations which were relatively of small scale, the underlying cause associated with the projects was extremely relevant in the discourse of TJ in Nepal. The implementing organizations' staff and officials have also begun a more conscious effort to monitor developments on the TJ process. These efforts indicate that a given environment will more likely be receptive to the messages and focus that the implementing organizations specialized in delivering in active collaboration with other like-minded agencies. This scouting work has also given the PtJ a clearer picture of advocacy groups and coalitions already working in each potential area around the TJ initiative. While the local organizations are better able to estimate the time and resources they will likely need to invest to make substantive progress in the TJ initiative, the national alliances have now focused on entailing zero tolerance to impunity and blanket amnesty.

Finally the urge for a viable TJ mechanism has also been reflected through the spontaneously revealed voices and concerns of the respondents as presented in the annex portion of the report. This could serve as significant guidelines for chartering a tangible course for securing justice to the victims of atrocities and also prioritizing the appropriate cluster area for the UNPFN and the other related agencies in the days to come.

2. INTRODUCTION

The CPA has made different commitments regarding different transitional justice mechanisms, including: a) High-Level Truth and Reconciliation Commission (TRC) to investigate truth about those involved in gross violations of human rights and crimes against humanity during the war and to create an environment for reconciliation in the society; b) National Peace and Rehabilitation Commission (NPRC) to carry out works regarding the relief and rehabilitation of conflict-victims and displaced to normalize the situation, while ensuring the right of victims of conflict and torture the families of disappeared persons to obtain relief; c) to make public the names and fate of persons forcibly disappeared by both sides within 60 days of the signing of the Accord; d) High-Level State Restructuring Recommendation Commission (SRRC) to carry out an inclusive, democratic and progressive restructuring of the state¹.

After signing the CPA, Nepal is undergoing profound changes. Confronting the past through transitional justice mechanisms namely the TRC and CoI-D is the precondition of peace and reconciliation. The CPA has well envisioned this notion and is reflected in the Interim Constitution, 2007 as well as in the various commitments of the political parties. Despite lack of common understanding on the reconciliation among political parties, the transitional justice process is moving along the peace process of Nepal. At the same time, the government has held public consultations on the draft TRC Bill which was made public in July 2007². However, the hastily conceived and carried out consultations have been significantly criticized by the concerned stakeholders for the method and effectiveness of the consultations. In the meantime, the government has gathered information about the victims and is providing them interim relief through the Ministry of Peace and Reconstruction (MoPR). The TRC and CoI-D Bills are already in the Parliament waiting for the final negotiation in their contents. The draft TRC Bill has been subject to significant criticism from local civil society groups and international organizations. In particular, the Bill appears to provide amnesty for a variety of crimes under international law, most troublingly enforced disappearance. The government is yet to address these concerns in the subsequent drafts of the Bill. The probability of blanket amnesty remains a major contentious issue for human rights community and victim groups.

The OHCHR, most relevant and lead UN agency on the transitional justice process, has received funding from the UNPFN and implemented it under the banner of Peace through Justice Project (PtJ) which was envisaged to support effective transitional justice mechanism. The PtJ has directly or indirectly contributed to community stabilization in the post conflict society that suffered from a decade long high intensity internal armed conflict. The project with its time bound programme has been influential achieving its four major outputs. One of the priorities of the UNPFN is to support the peace process under its priority cluster i.e. Rights and Reconciliation. Under this Priority cluster, OHCHR-Nepal accomplished the implementation of the PtJ by December 2011.

The United Nations Peace Building Fund (UNPBF) had financially supported the project through UNPFN. The overall objective of the project was to support TJ mechanisms such as TRC and the COI-D which could play a critical role in post conflict societies by establishing

¹ Comprehensive Peace Agreement, 2006

² The OHCHR also organized some consultations, on the same time, to receive the feedbacks on the Bills.

the facts and explaining causes, so that the serious violation of human rights of the past will not be repeated in the future. The envisaged TJ mechanisms in Nepal are one of the core elements of CPA and a concrete acknowledgement that the legacy of the conflict needs to be addressed as part of the peace process including justice and reparations.

The Project had the following key outputs:

1. The MoPR conducting effective preparations for the creation of the Commissions and providing necessary support in the on-going work of the Commissions;
2. Transitional justice Commissions working effectively and in accordance with international human rights standards;
3. Mapping document/s with research and analysis on conflict related international human rights and humanitarian law violations; and
4. Civil society and National Institutions are supporting the work of the Commissions.

The project document has stated independent evaluation to examine the overall goals achieved on the different outputs. The two consultants interacted with several grantees, staff of the OHCHR, experts on the subject and staff of the MoPR to obtain the information. The project documents, such as, proposal, narrative reports to the UNPFN and by the grantees to the OHCHR were closely reviewed.

The evaluation contains the information, analysis and findings on the management and finance, achievements on the outputs, effectiveness and results achieved, challenges and lessons learned and recommendations. Due to the limited time, geography and due to the of highway blockades (*Bandha*), all the grantees and relevant stakeholders were not met, but telephonic conversations were made with several of them. Further, instead of narrating the activities and achievements made by the each grantee, their contributions are divided on the thematic sub-headings.

The generic ideas of transitional justice envisaged in the CPA and the Interim Constitution is expanded to the common people through this project. The MoPR and other ministries and leaders of the political parties, including the MPs have gained knowledge on the issues of transitional justice, impunity, accountability, reparation and justice. Victims and civil society have gained the knowledge and expertise to deal with the TRC and CoI-D once they will be established. Still there are uncertainties about the formations of the TJ mechanisms with proper mandate, but tangible awareness, knowledge, capacity and conviction have been geared up at the ground level through this project.

However, it is revealed that in the absence of the OHCHR, a credible third party is lacking to continue the institutional legacy of the whole process. Perhaps the OHCHR which is also mentioned in the CPA to monitor the human rights violations and to develop the capacity at the national level never have thought of its early exit before the completion of the peace process. In this context, the UN, international community and civil society must develop a plan to support the civil society and victims before and after the establishment of TJ mechanisms and also to extend cooperation for the better functioning of these mechanisms.

The evaluation provides some lessons learned on the overall issues, project management and grantees management and indicates some future directions for the noble initiatives undertaken by this project.

3. OBJECTIVE OF EVALUATION

The main objective of the evaluation of PtJ project was to assess and examine the overall achievements under the project and their contribution to the peace-building process in Nepal. The specific objectives of the evaluation specified in the terms of reference are to:

- Examine the execution of PtJ project activities and its outcome achievements against the log frame in the project document and the UNPFN results framework;
- Assess the project's overall contribution to peace building and to potential impact in strengthening the peace process through supporting the GoN to establish effective transitional justice mechanisms as envisaged in the project document.
- Analyze lessons learned with regards to transitional justice and peace-building in Nepal and provide recommendations on how the project's contribution to the peace process could be strengthened;
- Assess overall performance of the PtJ project in terms of technical, financial management and its processes;

4. METHODOLOGIES

The evaluation is based on the content analysis of the primary and the secondary information obtained by a number of stakeholders/claimholders working directly on the PtJ projects and on the issue of human rights and transitional justice.

The available literatures on the subject have been reviewed extensively throughout the evaluation process. These include project document, final narrative reports from grantees, monitoring and evaluation report of OHCHR and IEC materials produced by grantees

The analysis is based on the open-ended interviews/interaction with Implementing agencies, Grantees, Civil Society Activists, Victims of internal armed conflict.

While evaluating the project, confidentiality has been ensured to the identity of the respondents without whom the evaluation would not have been possible. Every piece of information provided by the respondents has been kept entirely confidential and has not been quoted without their consent.

5. MANAGEMENT AND FINANCE

The management of the project implementation appears to have meticulously designed the programming and its linkage to the substantive unit like Accountability, Impunity and Rule of Law (AIR) has functioned effectively. A number of grantees appreciated the substantive support either provided or harmonized by the OHCHR, but the level of synchronization among the grantees was found weak and some expressed their ignorance about each other's constituency and focus, and in some cases, the incidences of the program overlaps could also be detected. For example, the ICTJ was entrusted to provide substantive support to the review of the interim relief guidelines, but other organisations were also found engaged in carrying out the similar task at the local level. Further, changes of staff in the interval at OHCHR are also found to be one of the factors causing problem to consistently deal with the government and other grantees.

In the project document, initially, all four outputs were planned to get operationalized simultaneously, but an alternative plan was envisioned by shifting the fund during the project cycle to the advocacy work of the TJ to the civil society and victims groups since the formation of TRC and CoI-D was procrastinated. However, some fund appears to have been allocated to ICTJ for which some local civil society organizations expressed their grievances against favoring the international organization. Since the fund allocated to the local organizations have produced tangible result in imparting the knowledge about transitional justice, according to those critical to the funding arrangements, it would have been better to offer the fund to different local organizations especially when the rule debarred the primary grantees to fund them within the six month's period of the termination of the first project. Further, the officials of the organization like FOHRID lamented that initially it submitted the proposal of 50,000 US dollar, but with many review and massive cuts, it only received 12,000 and had to compromise originally planned activities substantially³.

The project had to be redefined and the fund had to be reviewed to support the civil society as a consequence of significant delay in promulgating the TRC and CoI-D. According to the OHCHR, the initial purpose of the funding was to support to establish the TRC and CoI-D and once they are established, to support the technical aspect and simultaneously develop the capacity of the civil society and victim groups to engage them in the transitional justice process. However, due to delay in enacting the TRC and CoI-D bills and as envisaged by the project document, some of the fund was diverted to the civil society.

National Human Rights Institutions, like NHRC could not officially be part of the PtJ project despite their name were mentioned in the project document as the consequences of the administrative hurdles. NHRC and OHCHR already had detention monitoring project which was functional during the project cycle of PtJ project. Similarly, the project documents states about the INSEC and AF, but latter the support was provided to other organizations and such organizations were requested to provide technical support for the implementation of the projects.

On the release of payments, to the grantees, most of the organizations have received first installment, but some of them, until the submission of this report, are still waiting for the final payments. For the organization like CVSJ, which did not have funding from other projects, had to borrow from friends to pay the cost and still some of the payments are

³ Many organizations made the similar comments on cutting down the fund and activities.

reported to have been due. The review of the UNPFN reveals the sluggishness in the release of the grant to the fund receiving UN agencies and thus it appears this problem is of the UNPFN and further the Grant Steering Committee of the OCHR, Geneva appears to be responsible for this. However, the enormous lesson learnt is that in order to ensure smooth implementation of the project, through the grass root organizations, which do not run more than one projects, timely release of fund is a must. Further, the OHCHR, while implementing such project, may provide more power to handle the fund to the field office.

Most of the grantees complained that the budget was extremely thrifty in nature. For instance, a mere Rs 900.00 was provided to run an awareness program in a remote VDC which was deficient to cover the costs for participants' travel, stationary and basic refreshment and remuneration for the resource persons. The lessons learned in such a case is that the budget should have been designed and approved with proper and judicious guidelines to appropriately manage and ensure effective implementation of the project.

6. ACHIEVEMENTS ON OUTPUTS

The PtJ project has contributed significantly to UNPFN' objective as indicated in its priority cluster "Rights and Reconciliation" to support state authority to end human rights violations that is still occurring, to investigate past crimes, to identify those responsible and impose sanctions on perpetrator, to provide reparation to victim, to prevent future abuses, to preserve peace and to foster individual and national reconciliation. Substantive and consultative supports have been provided in the draft Bills on TRC and CoI-D. Awareness raising activities have been carried out by civil society organizations. Victim groups and networks have significantly contributed in ensuring demands for the formation of the commissions in consistent with internationally established norms with victim-centric approach. The formation of groups and networks of conflict victims in various districts have already begun to promote solidarity across the political divide and the nation.

6.1 Support to the Ministry of Peace and Reconstruction:

Support has been provided to the MoPR by OHCHR to conduct three regional, four clusters and three thematic consultations (gender, children and minority) with the victims groups on the draft TRC Bill. The support to organize consultation with children on the draft Bill was jointly provided by OHCHR and UNICEF. Similarly, as a continued support to the MoPR, comments were provided by OHCHR on the draft Bill on the CoI-D and provided technical support in revising the draft Bill on a TRC to ensure its conformity with international human rights standards. In spite of the strong advocacy campaigns and wider consultations, both national and regional and including with indigenous, children and women's organizations, there was limited progress in the area of transitional justice due to the political deadlock in the country. Both the draft Bills were approved by the Cabinet and were tabled in the Bill Committee in the Legislature-Parliament. Furthermore, OHCHR supported a study visit for the high level delegation on the TRC process in South Africa. The purpose of the visit was to make the policy makers understand the functioning of the South African TRC process; the best practices and lessons learnt. In addition, an exposure visit to Morocco was also organized to study the reparation policy and functioning of the TRC by the Reparation Project. Following the exposure visits to South Africa, upon the request made by the MoPR, the TJ Resource Centre has been established and is in operation as a public establishment.

6. 2: Support to the TJ Commissions:

This component has seen limited achievement due to substantial delay in the establishment of the Commissions. As a result of political instability, increasing misunderstanding and distrust between the political parties contributed to the delay in formation of the two commissions-TRC and CoI-D. The political climate remains unpredictable with regard to transitional justice initiatives, including the establishment of these long-cherished mechanisms. This situation is largely responsible on the slowness of the peace process, especially the integration and rehabilitation of the PLAs and the disputes on several contentious issues of the new constitution making.

Nevertheless, there have been significant developments on the enactment of the Bills in order to establish the TRC and CoI-D. The Government initially prepared two draft Bills under the MoPR by the end of 2007. Somehow these documents were unofficially released

and a debate was generated on the content, quality and process of the Bills. This paved the way to improve the quality of the Bills by including the components of truth, justice, reparation and reconciliation and the MoPR submitted it to the Council of Ministers which eventually tabled the Bills in the Legislature-Parliament. After the preliminary discussion in the Parliament, the Bills were sent to the Legislative Committee and where discussions on principles and sections were completed. Now the Bills are in the sub-committee of the Legislative Committee. Meanwhile, a technical committee consisting of small number of MPs is formed to negotiate on the disputed contents. Also, the Bill Committee has established a political sub-committee to brief about the disputed issues on the bills to the senior leaders of the political parties and accordingly, it has submitted a written report.

After a serious objection by the Maoist parliamentarians, a dispute has raised whether or not to remove the clauses on prosecution on the list of the serious offences. The political sub-committee appears to have recommended to the leaders to remove the prosecution clauses and to grant general amnesty. If the Bills are passed by the Parliament after removing such provisions and with the provision to grant amnesty, it will be an unfortunate move and the UN, civil society, international community and victims will obviously oppose such toothless machinery. Therefore, the OHCHR is entrusted to relentlessly redouble its effort for persuading and pressurizing the government of Nepal in the creation of the TJ mechanisms without compromising the justice component.

6. 3: Conflict Mapping:

The Conflict Mapping Team from OHCHR, which started its work since February 2010, has completed its assignment that comprises of three components and submitted to OHCHR Nepal. The three components are (a) Reference archive, which consists of 25,000 documents on different cases of human rights violations. (b) Data set which comprises of 8,000 plus cross-referenced information that contains the relevant case documentation of serious human rights violation with detailed victims' profile. This data set has been handed over to TJRC for the public use, and (c) Report that contains the incidents of the violation of international human rights and humanitarian law with illustrations on the breach of the each article violated.

The mapping work may be considered significant to record the serious violation of human rights in the past conflict. These records could be used by the two commissions as evidence. In case of failure to establish these commissions, OHCHR may choose to make them public in the right time from Geneva to highlight the need to address the past. Further the documents could also be used as the national archive, for public research and to make conflict parties accountable.

However, there are some thoughts on the use of mapping products in the absence of the OHCHR in Nepal and some suggestions are received to provide such documents to the MoPR or NHRC. Given the extremely sensitive nature of these documents, in the consultants' opinion, should be in the possession of the OHCHR in Geneva and may be used nationally or internationally in case of need.

6.4: Civil Society Grant Fund:

This part has supported 25 projects to 48 civil society organizations covering 34 districts. The project under the civil society grant fund have contributed in raising public awareness on concept of TJ through series of interactive workshops, consultations, publication, radio programmes, docudrama, TV talk show, street drama and shared over all aspects of TJ within broader cluster. This appears to be an important and relevant component to raise the level of knowledge of victims and general community and to facilitate the reform at the government level.

6.5: Policy Interventions

Among 48 different grantees, ICTJ, which received the largest fund from OHCHR, has been able to accomplish different activities under the PtJ project. Under this project, ICTJ implemented number of activities to have strategic impact to the peace building process in Nepal which is as follows:

- Hosted two workshops on the prospective TJ mechanisms which targeted participants from the members of the CA and specifically members from the Legislative Parliament. In addition, representatives from the OAG, Supreme Court and the Ministry of Peace and Reconstruction also participated.
- Five regional workshops were conducted with the aim to bring central level ministries' representatives to the district level to engage them with various stakeholders implementing relief programme. A total of 270 participants attended the workshops, representing 73 conflict affected districts.
- Undertook consultations with the Government officials and the members of parliament. In particular, held meeting with RRU and the Task Force to help broaden the participants' understanding of the role of reparations within a transitional justice framework.
- Developed a policy paper on how the current relief programme could be improved upon or redesigned and how that might help reform future reparations policy. The policy paper that had provided to OHCHR's reparation team has been shared with GoN to support its legal and policy development on a future reparation as well as evaluation of the Interim Relief Programme.
- Two residential workshops held to enhance discussion on the approaches in establishing a comprehensive reparations programme.
- Carried out research into existing victim groups, their needs and access to support services.
- Carried out survey of the Interim Relief Scheme, comprising victim's needs assessment and government responses.
- Coordinated amongst the ten ministries of the government on implementation of the relief program of the government through the MoPR, helped in implementing it along with the revision of the text of the relief program. Produced and disseminated briefing paper, poster and information kit.

The different activities of ICTJ suggest that it has made policy intervention on the issues of reparation, relief distribution and other important components of the transitional justice. The involvement of the international experts and victims groups has made success in achieving the results out of the activities of the ICTJ. Some other

organisations like FOHRID, Pro-Public and so on were also involved in contributing policy part on their respective areas.

6.6 Public Awareness

The public awareness interactive sessions were organized through different workshops. In addition to the workshops and seminars organized by different organization, CYIC Surkhet, performed street dramas in 50 locations of ten districts of Mid and Far Western regions of Nepal, on transitional justice, as an awareness raising campaign, reaching out to the marginalized and less educated people in the remote places. It tried to translate the concept of complex transitional justice process into real accessible terms for general public. The CYIC team also had opportunity to learn more on TJ mechanisms, regarding which they were not clear in the beginning of the project. The project through street drama has been able to make people interact at grassroots level. It has been raising awareness on TJ, role of general public in the process and on the need of alternative means of protest and violence. The CDECF, Sindhupalchowk also performed street drama and raised awareness.

Awareness rising through radio programme on TJ and community orientation by HURAC Rolpa, FMDC, GYC, Baglung, ECDF, CVC Bardiya, Women Journalist Group (WJWRG), Morang was important to reach to the community. The HADC which helped in awareness rising and enhanced the relation between victims from both sides in Rolpa district was important contribution for the trust and peace building. In order to build a common and effective voice, the MAHURI Home, CYIC, Banke UNESCO Club, Nepal Red Cross Society, Darchula helped in formation of victim groups and mobilise them to reach to the victims and put pressure to the local administration for their rights.

The Himalayan Area Development Centre - HADC and Environment Conservation and Development Forum – ECDF which have started implementing their projects activities have elements on raising public awareness on transitional justice issues. The DFHRI project, which broadcast a television talk show on the reports of commissions constituted to investigate into the past cases of serious violation of international human rights law and violations of international humanitarian law. Based on a viewer-ship survey, it is estimated that around 1.29 million viewers watched the programme and were sensitized about transitional justice issues and process. The CYIC project performed street drama on transitional justice at 50 locations of 10 mid and far western districts. More than 18,000 people watched the performances and a sample survey was conducted in these locations, showed that the level of understanding among the viewers about simple facts on transitional justice before the performance was some 27 per cent and after the performance it went up to 87 per cent.

The activities carried out by CVC, HADC, ECDF and CVSJ have targeted to directly support the conflict victims in the project districts. More than 9,000 conflict victims have been organized in groups and networks in 22 districts. CVC has organized around 850 conflict victims in Bardiya district under five regional teams to jointly advocate for justice. Similarly, the ECDF project has organized about 200 conflict victims into eight local groups in Taplejung district. Further, 19 trained psychosocial counsellors from the HADC project visited 15 project districts and met with 145 conflict victims informing them about how they should participate in the transitional justice process before and after the transitional justice mechanisms are formed. After the counselling services, some conflict victims in Gorkha district, who were not aware about the government provisioned relief assistance,

are reported to have contacted the local administration and availed the relief package. The CVSJ project organized around 8,000 conflict victims in 20 districts of the country. Likewise Kathmandu School of Law implemented public awareness programme on TJ that was exclusively targeted towards colleges students. The information centre which was created by KSL has been moved within KSL territory offering information bank to every interest candidate for further research and discussion.

It is observed that due to the public awareness programmes in the different parts of the country, the knowledge of transitional justice have spread to the local level, but due to the delay in establishing the TRC and CoI-D and proper healings initiatives, the victims may further be victimised and their expectation of truth, justice and reparation may simply be manipulated by the groups who believe in the violent activities.

6.7 Publication and Documentations

Committee for the Publication of a Book on Ramechhap during the Armed Conflict – CPBRAC and HADC have successfully compiled information of the incidents of serious human rights violation during the conflict in two districts – Ramechhap and Gorkha. The project in Ramechhap has gathered information around five thousand conflict victims including 215 killings and 25 disappearances. The other types of victims in the compilation include those of displacement, physical torture/assault, disability, property confiscation and psychological trauma. Similarly, the project in Gorkha has collected information on 374 cases of (337 killings, 26 disappearances and 11 permanent disability) victimization. The project carried out by HADC has published 230 pages book on Gorkha in 10 years conflict, which is mainly a compilation of information on 341 persons killed, 23 cases of enforced disappearance and 85 incidents of infrastructural damage that took place during the conflict.

Media Foundation Nepal documented 10 cases of human rights violation in their publication titled “Healing the wounds: Stories from Nepal’s Transitional Justice Process.” The WJWRG-Morang has also published a booklet comprising ten cases of human rights violations. Nepal Society for Disable (NSD) collected data of the conflict affected PWDs from Rukum and Salyan in cooperation with the local organizations.

Committee for the Publication of a Book on Ramechhap during the Armed Conflict (CPBRAC) Ramechhap has been able to document all the incident of Killings and enforced disappearances that happened during conflict within Ramechhap district. It has also collected good amount of information on the incidents of other forms of serious human rights violations. The project has been able to produce documents which could be handed over to the formal TJ mechanisms once they start functioning or it could also be handed over to TJRC for the public use. Many Local Peace Committees have requested for the availability of the book which could be considered as the positive impact of the project

6.8 Strategic Litigation

The Pro-Public has filed three cases as public interest litigation in the Supreme Court of Nepal. Human Rights and Democratic Forum (FOHRID) reviewed legal framework and produced analytical paper on prosecution initiatives for conflict related cases of human rights violations with focus on withdrawal of cases. The Judges Society Nepal has reviewed

15 cases decided by the Supreme Court and held consultation w/shop where CA members, judges, NGOs and police were present and 500 copies of books are were being published.

Most of the cases filed in the Supreme Court are not decided yet, but the case to challenge the legal basis of withdrawal of the State Cases Act⁴ by Pro-Public would be landmark in the jurisprudential development, if decided positively. Further, the analysis of the conflict related cases by the Judges Society would help to set the principle in the legal system on truth, justice, reparation and role of the criminal justice to deal with the case of past human rights violations .

6.9 Awareness Rising through Audio Visual

The Democratic Freedom and Human Rights Institute (DFHRI) produced five episodes of TV show titled “*Jawafdehita Kasko? (whose accountability?)*” this was related with the incident of violations of human rights and humanitarian law. The beneficiaries of this project has been government authorities, I/NGOs, political leaders, victims and general public who have greatly benefitted through sharing of information on the status of victims and their demand for justice. This type of programme has been able to create platform for sharing the information, ventilating the pains of victims and delivering the message at public. On the policy level, DFHRI had been able to screen these shows with the Prime Minister and senior government officials and had public screening of the documentary on the major cities within Nepal. Likewise, International Institute for Human Rights Environment and Development (INHURED International) produced a transitional justice related docudrama titled “*Journey to Justice*” and screened throughout the country on different occasions. The docudrama reflects eleven emblematic cases of severe human rights violation during the internal armed conflict. The screening of the docudrama both at home and abroad has contributed to raise awareness on the TJ mechanisms together with issue of accountability and impunity. Screened at cinema theatres, TV channels, different public forums and universities, the docudrama has served as an important tool to vividly depict the incidents of serious human rights violations. Some of the organisations, as already mentioned have contributed through the FM radio programs to raise the awareness in public on the TJ issues and process.

6.10 Advocacy by Victim Groups

Conflict Victim Society (CVC) under the project PtJ successfully organized one workshop on disappearance where victims, local political leaders, HR activist, lawyers, civil society members and government officials were invited in the district headquarters of Bardiya. Likewise community based awareness program was conducted in five different places of the Bardiya district where victims from the local community participated and held interactive discussion on victim’s rights, TJ mechanisms and interim relief fund etc. The CVC also successfully accomplished public hearing on TJ through radio program in four places of Bardiya district. With the activities generated by CVC through PtJ project many underlying voices and issues has come up with massive consultation. Through the activities, victims have been able to raise their concerns on victim’s rights to justice, punishment to the perpetrator, reparation etc. With the implementation of the project and pressure created by CVC group, Local Peace Committee has been formed in village level and victims have

⁴ Section 29 of the State Cases Act, 1991

been receiving relief support in better manner. The same story repeats in Morang under the activities implemented by WJWRG.

Conflict victim and their families along with the other members of the community have been the direct beneficiaries of this project. The CVC has been better informed regarding the TJ mechanisms and there has been a rapid brainstorming between the people at grass root level which could be taken as major achievement thorough this project. More than five hundred people got directly benefitted during the orientation on TJ mechanism which has multiplier effect for the understanding on TJ mechanisms within broader mass. The CVC has been catalyst in carrying out micro voice to macro policy level by themselves and also with the help of different networks. The CVC has been the platform where it has built the harmonious relation between conflicts victims from both sides who have united together for their common quest for justice. Due to the support through PtJ project CVC has been able to mainstream the voice of victim.

The CVSJ which has formed networks of victims in 20 districts has trained leaders of the victims groups, facilitated access of victims to the interim relief, build up awareness through the village level victims groups has created a sort of victims movement beyond it scope of 20 districts and made the victims able to raise their issues themselves. It also created an environment of reconciliation as victims of both side were tighter in the entire process.

7. OVERALL RESULTS ACHIEVED

7.1 Strategic Contribution to Peace building in Nepal

The project has been envisioned towards the consolidation of the TJ mechanism as enshrined in the CPA. The project was incepted in a situation where the general understanding about the notion of TJ was fairly new and emerging. Thus, a massive engagement with various actors of the peace process was immensely desirable to reach to the logical framework of TJ mechanisms.

First and foremost the activities accomplished under PtJ project have enlightened and motivated the key actors to formulate the TJ mechanisms in compliance with the internationally accepted norms values and standards. Categorically, the draft Bills on TRC and CoI-D have been considerably improved in favour of securing justice and ensuring accountability.

More importantly, the activities of the projects have manifested the all aspects of the TJ endeavours along with the documentation of the undocumented cases of the incidents of serious human rights violation. Similarly, one of the significant impacts of the project has been to empower the victims and their networks to amplify their unified concerns for justices and reparation resulting in bridging the micro voice to macro policy reform.

With the interventions of the project activities, the issue of TJ is no longer confined to victims' concern alone. Various organizations and actors have gradually begun taking ownership of the initiatives on behalf of victims. This has led to paradigm shift on the demand from mere blood money compensation to the comprehensive reparation as a right.

The culture of silent amnesty is being collectively challenged. The withdrawals of cases by the successive governments have been vehemently opposed by all sections of the society. However, due to the failure to reach out to the senior leaders of the political parties and senior staff of the security forces on their fear of being prosecuted, the success could only reach to deter such incidents of serious human rights violation in future.

The documentation of the cases both by OHCHR and the grantees has been vital ground work that could be utilized by TJ mechanisms once they are established. The archive of the cases would be instrumental in criminal proceedings even if the TJ mechanisms are not established.

The other strategic impact of the project is to establish the need for the special mechanisms towards addressing the special needs of the vulnerable populations such as PWDs Women and Children and others

The activities pertaining to awareness, research, training, advocacy, litigation and campaign carried out by various civil society actors have immensely contributed to enlighten the general public and the policy maker towards addressing the problem of impunity as well as ensuring accountability.

Despite limited time, constrains of resources crippled by non-conducive political climate, the activities accomplished under the project yielded numerous positive impacts. The magnitude of public awareness has been witnessed significantly high due to the programmatic interventions of the project that contributed to enhance victim centred approach.

7.2 Approaches to Peace Building Programming

At the inception of the project, a risk assessment was carried out. The commitment of government and of political actors to address impunity, the security situation, the cooperation of line ministries, civil society and TJ commissions, once established, were identified as factors that would influence the success of the project. To mitigate the risk, OHCHR Nepal, together with other national and international stakeholders, engaged in extensive advocacy work towards the establishment of transitional justice mechanism. Despite of such efforts, the senior leaders of the UCPN-M still fear that massive investigation of past cases would undermine their contribution for the change and may fuel conflicts in the society.

The project has been equally cautious not to create an undue space in further dividing the community in fragmentation by providing reservation to some particular ethnicity, race and tribe. The project has been able to have its programmatic intervention by keeping the victims and stakeholder as peace builders and has successfully engaged people in community peace building. The project has paid particular attention to the inclusion of women and gender perspective in the program implementation phase.

7.3 Complementarity to National Mechanisms and Priorities

The project functioned in line with the core component of CPA which provides for the creation of a TRC and reaffirms the commitments towards the establishment of a CoI-D as

provided for in the Agreement of 8 November 2006 between the then Seven Political Parties and the CPN-M. These commissions are a concrete and formal acknowledgement that the legacy of the conflict needs to be addressed as part of the peace process including processes to establish truth, justice and reparations. The overall objective of the project is to strengthen the peace process on the basis of respect for the rule of law and human rights including by dealing with human rights and international humanitarian law violations connected to the conflict. Hence, the project was only successful to develop the capacity of the MoPR, establish TJ Resource Centre, prepare the enabling legislation, develop the capacity of the civil society and victims groups, but could not include the national institution like NHRC, Women's commissions on fold along with its anticipated capacity to follow the work the OHCHR has accomplished. However, the victims are mainstreamed through projects supported as priority for the TJ process and all four components of the TJ like truth, justice, reparation and reconciliation are set as must address issues in the Nepalese TJ process. Perhaps, none of them will be undermined in the discourse. It appears that along with the massive awareness and standard setting work, to compliment the process, the OHCHR could have work with the leaders of the political parties and senior staff of the security forces, through its political advisor, to explain the limit and purpose of prosecution in the TJ process of Nepal.

8. THE CHALLENGES AND LESSONS LEARNED

Despite of significant contribution made by the project, the followings are some of the challenges and lessons learnt:

Significant delays in formation of the TJ mechanisms (TRC and CoI-D) have been noted as a major challenge in the course of the implementation of the overall project. Additionally, the high chances of transforming the Bills on TRC and CoI-D into amnesty laws has been major issue of contention that has been expressed by almost all the respondents while evaluating the impact of the project.

The failure of political parties to reach to a consensus to unanimously define the terms of the TJ mechanisms enshrined in the Comprehensive Peace Agreement has created an environment of mistrust affecting the thrust for ending impunity and establishing accountability. Such a move from the political leadership has rendered uncertainty in assuring justice to the victims leaving the whole process in jeopardy.

Significant delays had been encountered in disbursing the final payment to civil society organizations who received grant for the implementation of Ptj project which resulted in the delay in their programmatic intervention.

The coordination and sharing between the grantees under civil society grant is found cumbersome. The advocacy materials produced by grantees are scattered in the absence of a provision in bringing the resources together for the purpose of revisiting the viability and effectiveness as well as strategies for a coordinated intervention.

The sustainability of TJRC also faces with enormous problem due to looming financial constraints. The need has been felt for better security measure to be adopted for ensuring the confidentiality of the information archived in TRJC.

Specific case study on one of the grantees:

During the project implementation phase, the internal unrest between CVC board members heightened which reached up to government administrative level. The CDO of Bardiya district gave instruction to deactivate the bank account of CVC following the complaint logged by some of the board members, where they explicitly mentioned regarding the irregularities of the fund and financial discipline. As the bank account was suspended for quite a long time, CVC was not being able to carry out one of the activities and was forced to return 83,000 NRS to OHCHR

CVC is very strong in encompassing the issue of TJ however it lacks standard financial training. CVC hold strong challenges on resource management. There is clear need for providing constant back up for CVC unless it becomes independent in dealing with financial management. If any agency plans to provide funding support to CVC, then it is advisable to equip them with appropriate back up.

A significant amount of work has been carried out with MoPR, however, there is still a dire need for the capacity enhancement of the officials within ministry. It has been appraised that OHCHR mostly worked with the civil society and victims and put the MoPR in an awkward situation. The focal person of the MoPR opines that the volume of wish list and criticism from the civil society and victim groups increased for which OHCHR through this project is primarily responsible. According to the focal person in MoPR, the UN agencies should further contribute to the TJ Resource Centre, and facilitate discourse on the Bills and their subsequent regulation.

Similarly, the focal person in MoPR believes that once the TRC and CoI-D are established, the UN agencies are expected to assist them in their functional aspects through enhanced coordination with the NPTF to support to the MoPR and other initiative on the transitional justice issues. Accordingly, the TJ process in Nepal can only move along with the integration and rehabilitation of the combatants along with the timely promulgation of the new constitution. Political consensus is vital to negotiate the Bills, which may pave the way for enacting the Bills in their current form. The OHCHR appears to have strengthen the understanding of the TJ but the comments from the MoPR suggest that any future initiative must be consultative, prior to finalization of the project document and lessons may be learned to involved in such collaboration with the MoPR.

Most of the aspects of the TJ are covered, except, law and institutional reform. In any initiatives by the UN, in future is advisable, to include the law and institutional reform with the aim to strengthening the rule of law and removing the repressive or human rights unfriendly legal provisions such as in security related laws.

The programmatic intervention of most of the grantees got delayed in implementation as consequences of the late signing of the agreements. Furthermore, a range of activities encountered delays due to strikes, unfavourable climatic conditions and festival seasons.

The absence of the grantee management guidelines contributed to inconsistency in the implementation of the projects. Such situation was added due to the gap of institutional memory result from the sudden vacuum of the concerned staff from OHCHR.

Due to the political uncertainty, the planned activities of some of the grantees had to change completely. There exists lack of coordination among the government stakeholders in the districts as well as inconsistency instructions coming from the central level, particularly with regards to the interim relief programme confused people at the regional level. In absence of contingency plan while dealing with difficult political context, each request to change the activities had to be approved by the grants' committee within the tight time frame.

9. CONCLUSIONS AND RECOMMENDATIONS

9.1 CONCLUSIONS

The selection of funding on the rights and reconciliation to the OHCHR can be considered an appropriate endeavour of the UNPFN. This has enabled to create interest, debate, protest and way forward to deal with the past human rights violation during the armed conflict and contributed to create an environment for reconciliation. The four outputs: to enhance the capacity of government to prepare for the TJ mechanisms, to collect the evidence, support to the TJ mechanisms and develop the capacity of civil society and victims groups were the rights choices. One of the outputs to support the TJ mechanisms could not be achieved due to the delay in the peace process, but ground work such as drafting the Bills are accomplished.

The selection of the implementing organisations appears to be inclusive and gender sensitive as required by the UNPFN and the project has largely focused on the peace-building approach by keeping the victims in the centre of the interventions. Supporting to the international organisation like ICTJ is contested by some of the local organisations, but the value it has brought in the specific areas like reparation is incomparable to the criticism. The MoPR has some grievances over the funding mostly to the civil society and victims groups, but on contrary, the OHCHR echoes its contentment that it could develop the victim centric awareness. As a result, a lot of pressure has already been built-up for the establishment of the TRC and CoI-D, but it is not clear how such efforts will be sustainable in the absence of the OHCHR and in the absence of external funding. Therefore, the focal persons responsible to the project in OHCHR contemplate that the UNPFN itself, or the NPTF or the NHRC or framework like UNDAF are expected to incorporate this vital issues in their future plans.

One of the issues raised was failure to deal with the political actors and senior staff of the security forces to prepare them to face investigation and perhaps proceeding with some instances of prosecution would have been considered a positive move. The OHCHR could have enhanced more political lobbying along with the UN system at the top brass leadership level and convinced them that only in serious cases, perhaps limited in number, having emblematic importance will be prosecuted. If the political advisor, as envisaged in the budget, would have been hired and engaged, the results could have been positive. But, there is an equal danger of such move may also invite criticism to the OHCHR for compromising beyond its mandate to combat the problem of impunity. In sum, the contribution of the OHCHR to highlight the issues of transitional justice with special focus on truth, justice, reparation and reconciliation could be considered successful.

Given the incidents of serious violation of human rights during the conflict, it is high time the state take into cognizance those abuses, sincerely tried to heal wound of the victims and brought perpetrators to justice. No process can bring about sustainable peace, if serious crimes and abuses are condoned or victims are forgotten. It is worth-mentioning that the international law is against blanket amnesty, especially amnesty to perpetrators of system crimes (war crimes, genocide, crimes against humanity) and also serious violation of human rights. It is in this context that the TRC becomes pertinent to help the society understand and acknowledge a contested or denied history, and in doing so brings the voices and stories of victims, often hidden from public view to public at large.

Establishing reparations policies that take into account the requirements of or moral obligations to, the victims is another vital component of the transitional justice. These policies can include economic compensation as well as a variety of health (physical and mental) and education benefits, and symbolic measures, such as a state apology. Similarly, remembering and honouring victims through a series of measures, and catalysing constructive social dialogue about the past; developing reconciliation initiatives, such as working with victims to determine what they require in order to experience healing and closure, and forging peaceful coexistence among former adversaries without sacrificing justice and accountability for perpetrators. Reforming institutions that have a history of abusive behaviour, in order to prevent future patterns of abuse and establish state-society relationships based on functioning and fair institutions are some important elements of securing peace through justice. The obvious challenge is who would catch the relay stick in the absence of the OHCHR's field presence?

Though the TJ process is widely accepted as an adaptive process, some important lessons that the future TRC of Nepal could learned from comparative experiences. These may be categorised as a) Intensive consultation with the victims and other stakeholders of the area is very important before forming such commissions so as to respond to the needs and interests of victims; b) Selection of commissioners should be done through a transparent and participatory process so that efficient persons can be selected as commissioners and the victims and other citizens can have the feeling of ownership of such a commission; c) TRC should be given a broad mandate to enable it to fulfil its objectives effectively along with a strong investigative powers in a variety of crimes punishable as per the international laws and other relevant powers regarding making recommendations, naming the perpetrators, facilitating reconciliation (in less serious crimes); and d) Specific attention should be given towards the proper implementation of the recommendations.

Above all, the strategy and the process of developing it have resulted in a roadmap that the PtJ project needs to strategize future activities, not only in the realm of legislative change, but also with regard to other components of criminal justice reform. The partnership with the PtJ project has potentially given the implementing organizations a powerful way to approach to prospective funders about the organizations' work more broadly and to make a compelling case for funding that will support to complete the unfinished agenda of the TJ process. In sum, the PtJ project has achieved a great success using a correct intervention model developed over the years. The beneficiaries are now more focused and know where to engage and, perhaps more importantly, where not to.

9.2. RECOMMENDATIONS

Based on the information, facts, analysis and conclusions, the followings recommendations are made to the different actors:

TO THE GOVERNMENT

- i. Establish TRC and COI-D in accordance with the international standards and practices without further delay;
- ii. Bring the perpetrators of serious human rights violation into the book of justice through proper investigation and initiate vetting process to those responsible for committing human rights violations;
- iii. Maintain and update official database of victims' profile in coordination with the effort of civil society organizations and victims' groups;
- iv. Formulate and revisit appropriate policy for interim relief while considering specific need of the most vulnerable victims and their families;
- v. Refrain from withdrawing the cases in relation to severe human rights violations and demarcate between political cases and the crimes committed by political persons;

TO THE UN PEACE FUND NEPAL

- i. Refrain from and lobby with donors for not providing pecuniary and technical assistance to the government by setting up pre-conditions if justice component is compromised in the TRC and COI-D Bills;
- ii. Undertake appropriate lobby with donors and diplomatic community to establish common benchmarks in collectively opposing the problem of impunity and pre-empt the possible blanket amnesty;
- iii. Continue prioritizing "rights and reconciliation" on its priority cluster area for future funding support in the areas of justice and accountability;
- iv. Support civil society organizations in their effort on the issues of transitional justice, impunity and accountability;

TO THE OHCHR

- i. Strategies appropriate plan for partnership in action among the concerned stakeholders in relation to the follow up of the activities executed by the office prior to its exist from the country;
- ii. Refrain from disclosing and transferring the confidential document to government unless it is fully convinced that the political climate is favourable to do so;
- iii. Continue rendering its technical support and advisory services to the government and civil society actors towards safe guarding and promoting human rights, rule of law and transitional justice;
- iv. Intensify diplomatic pressure against the government's possible move in granting blanket amnesty and rampant withdrawals of cases;

TO THE CIVIL SOCIETY

- i. Redouble efforts to create pressure to the government in establishing the TRC and COI-D in compliance with internationally accepted norms and values;

- ii. Intensify public awareness campaign on TJ through research, education, training, advocacy and litigation;
- iii. Engage in policy dialogue with parliamentarians, political parties and the state authorities to ensure that the TJ mechanisms are established in conformity with universal benchmarks;
- iv. Assist, educate and empower victims and their families in accessing relief and recovery as well as in their effort to seek justice.

TO THE VICTIMS

- i. Create a common understanding across political/ethnic or geographical divide to secure justice and comprehensive reparation as a fundamental right;
- ii. Consolidate unified voice among different groups and individuals to collectively assert victim centred TJ mechanisms;
- iii. Engage constructively in the community healing and reconciliatory process

10. THE WAY FORWARD

In the current national scenario, an important direction at the national level will be to tailor the PtJ project's work more consciously to meet those particular needs of the changing political reckoning concerning the TJ. Now, with a very unfavourable political climate, the reform readiness in dealing with past crimes is tough, victims' frustration level has gone to a sheer height and the CSOs are angry with the move of the government. In such a context, the PtJ initiative should outline different ways of working—including different intervention structures, different consulting needs, and different types of support required to the victims and local organizations.

The public information campaign under the PtJ project has been extremely active and important since the project's inception. The well-crafted strategic-planning under the PtJ also has generated multiple over-arching benefits. For one, it has helped the implementing organizations' staff better understand the effect of their work. There are almost always dozens, if not hundreds, of groups working on the same or a similar issue. On the issue of TJ, when success is achieved, it's very difficult to know how much—or how little—one organization's work has contributed. Most advocacy organizations use surrogate measures, like the number of meetings they have organized, number of IEC materials they have produced or press communiqué or memorandums they've issued. But those metrics alone do a poor job of tracking movement towards attaining the true goal. Such conventional strategy must be revisited.

The urgency today is to investigate the instances of human rights abuse by both the Maoists and the state forces during the armed conflict to ensure that the perpetrators are brought to justice. Flying in the face of the demand for judicial process in the instances of conflict-era excess, there is today an attempt to institutionalise the rapidly expanding state of impunity by helping the accused of conflict-era murder, violence, terror and disappearance escape accountability. This has gravely hurt the prospects of the victims of conflict-era violence receiving justice.

In order to erase the terrific and painful incidents of the conflict from the memory of society, to avoid impending cycle of violence and to find lasting peace and reconciliation, it

is indispensable to establish the TJ mechanisms in conformity with international standards. Similarly, a gender justice approach should be a central element, exploring how people experience conflict and human rights violations differently. The pursuit of gender justice includes prosecutions for gender-based violence; reparations delivery to diverse groups of women and their families; memorials recognizing women's experiences; and institutional reform that serves human security needs and promotes women's access to justice. The right to privacy in the proceedings of the investigation and rendering justice (e.g. in-camera trial in the event of sexual assault, rape etc) needs to be taken into serious consideration.

The principle of transitional justice must not be conceived as "eye for an eye" but the culprits involved in serious breach of human rights violation, war crimes, crimes against humanity and genocide must not be let Scot-free under any circumstance. Also, the PtJ project now should envision the notion that it is not binding to wait for a transitional justice mechanism in order to do away with the problem of impunity. Rather it is imperative to prosecute the alleged perpetrators in accordance with the existing laws towards paving the way for ending the culture of impunity.

If the meaningful collaboration with the sufferers themselves is not ensured in the process of truth-seeking, prosecution, reparation and institutional reform, the grimy history of the repetition looms around. The delay in the formation of the TRC and the CoD-I has further added insult to injury. Thus, it is high time that political parties, human rights activists, civil society, lawyers and journalists to be ever more alert to protect the right to justice of the victims of conflict, at a time when the government seems intent on providing a political cover for the grave conflict-era human rights abuse.

The creation of the TRC should also be seen in the context of international obligations of the state. The wrongdoings must be investigated, culprits prosecuted and eventually sanctioned, of course attaching due regard to the principles of fair trial and without resorting to vengeance. A corollary to this is the positive obligation to establish a system of justice that acts fairly, attaches due consideration to the rights of the accused, victims and society at large, punishes every wrong and thereby helps in the prevention of crimes and human rights abuses. The OHCHR has an obligation to make the government believe that so long as the state is capable, fair and willing to bringing to justice alleged perpetrators of human rights abuses, international law does not permit international community to interfere in the domestic affairs of the concerned state.

The End

ANNEX I.

ACRONYMS AND ABBREVIATIONS

AIR	Accountability, Impunity and Rule of Law
CoI-D	Commission of Inquiry on Disappearances
CIF	Community Improvement Forum
CDECF	Community Development and Environment Conservation Forum
COSDER	Centre for Oppressed Society Development and Research
CPA	Comprehensive Peace Agreement
CPBRAC	Committee for the Publication of a Book on Ramechhap during the Armed Conflict
CPN-M	Communist Party of Nepal (Maoist)
CVC	Conflict Victims' Committee
CVSJ	Conflict Victims' Society for Justice
CYIC	Community Youth Information Centre
DFHRI	Democratic Freedom and Human Rights Institute
ECDF	Environment Conservation and Development Forum
FMDC	Farwest Media Development Centre
FOHRID	Human Rights and Democratic Forum
GYC	Gaja Youth Club
HADC	Himalayan Area Development Centre
HURAC	Human Rights Awareness Centre
ICTJ	International Center for Transitional Justice

JSN	Judges' Society Nepal
INHURED	International Institute for Human Rights, Environment and Development
KSL	Kathmandu School of Law
MAHURI Home	Madhesh Human Rights Home
MoPR	Ministry of Peace and Reconstruction
NRS	Nepal Red Cross Society
NSD	Nepal Society for Disable
RSC	Rural Strengthening Centre
TRC	Truth and Reconciliation Commission
TJRC	Transitional Justice Resource Centre
OHCHR	Office of the High Commissioner for Human Rights
UNPFN	United Nations Peace Fund for Nepal
WAC	Working for Access and Creation
WJWRG	Women Journalists for Women Rights Group

ANNEX II.

VOICES OF THE VOICELESS

Damage and harm: *The injury of excess is beyond reparation. The cost of the loss of a loved one is always agonizing-especially when that loss was deliberately inflicted and is perceived as a punishment meted out to adversaries, an irrational violence inflicted as a punishment. Victims' families are at a complete loss to explain it. They are unable to experience the grief that goes along with death and damage, because the fate of their loved ones who disappear after arrest or abduction remains unclear even five years on after the signing of the CPA.*

Death and disruption: *For many, it is impossible to believe someone's life will be taken in such a cruel way. They wish as if it were like a bad dream. The human mind cannot fathom, let alone justify, a death inflicted in such circumstances. To accept it is to embrace always horror and dehumanization. The family members express this anguishing sensation of finding death meaningless. Many relatives of the members of the security forces and the then rebels who were unjustifiably killed in the conflict also have the same feeling of being punished.*

Altered anguish: *Many feel that they weren't theirs even in death. Family members were denied not only the possibility of finding out why their loved ones had been killed, but even of seeing their bodies, giving their remains a decent burial, and expressing and sharing their grief. Since they were prevented from participating in any funeral rites, since this death was associated with horror and they then had to survive for years in fear, loneliness, distress and solitary, these families could not let themselves feel the pain of death. In several instances, they don't even know whether someone is dead or alive.*

The state of the relatives of those who disappeared after abduction or arrest is one of endless pains. The peace of mind is stolen away thus their feelings of powerlessness become chronic. When they saw on television a mass grave discovered last year, the possibility that their loved one's capture might have ended in death becomes fact. But questions remain whether they have to consider him/her dead. They want to know the exact time and venue of the murder and most importantly the name of the perpetrator. Insofar as there is no answer or proof enabling them to resolve such questions, the relatives find themselves in the dramatic situation of having to be the ones who bring matters to a close. Most family members find this unacceptable and that obviously aggravates their feelings of powerlessness and uncertainty. Many complain that now they do not even have the photos of the loved one as the last copy is also taken by those who promised to return it and it never happened.

Torture and cruelty: *Many of those victimized and killed were tortured. The family is aware of what happened because they have seen the signs on their bodies or through the accounts of other inmates or captives. The way they were killed thus becomes a nightmare which is harsher than their death itself. Astonishment and disbelief over torture combine to produce a renewed repulsion.*

Displacement by design: *Many people who were displaced during the conflict have not been able to go back to the place of their origin. This is either they do not see viability of returning to their homestead—socially, politically or economically or simply opt to continue their life in the newly created domicile as the horror of atrocity still haunts them. For many, life is difficult in the new settlement but there is no option.*

Protracted indecision: This thrust to seek justice has been a long nightmare with an unbearable pain, plight and trauma. The families of those who disappeared after arrest/abduction have been condemned to live in permanent uncertainty. Over and over in the stories, the unanswered questions and hovering ghosts keep coming back. Such is the uncertainty that becomes chronic and that completely permeates life. The undue delay in the formation of the TRC and CoI-D has created further agony.

Waiting and still waiting: Many tearfully express that the front door of the house was left always ajar with a hope that the loved one will step in any moment. Waiting is a fact of life painfully experienced by the relatives of those who were involuntarily disappeared. Many have not changed their house, their village, or their job despite threats and difficulties; others have kept the clothing and possessions of the absent member just as they were. Many have seen their hope of finding them alive evaporate. All would still like to know where they are and what happened to them. Life transpires as a ceaseless waiting with an illusionary hope.

Truth seeking: The relatives claim that they have at least the right to know the truth. Contradictory official accounts, false hopes, or complete silence on the part of the authorities impel relatives to an untiring search for the truth of what happened. Finding out the truth is a way of putting an end to speculation and finding comfort. They are eager to know what happened to them, why they were killed or made them disappear and what did they do to their body. Question such as how did they arrest them and where did they take them obsess the mind and prevent people from finding peace.

Traumatic disorder: This is one of the silent killing factors for the families, friends and relatives. The experience of individual and social trauma is unspeakable and has an impact on the physical and mental health of the affected families. The impact of these events goes far beyond specific events and reflection of their whole future. Their lives seem to revolve around a particular point--the death or disappearance of their loved one.

Ruined family: Penalizing the beloved one is often as bad as punishing the whole family. While many people say that their family came together in the face of adversity, in most of the accounts people feel both nostalgia and impotence, as they recall how family ties broke down and family members are scattered. Individual members of the same family often had different reactions to the death or disappearance of one of its members. Some stood in solidarity with the situation and devoted themselves to efforts to clarify the death or locate the missing member; others did not regard it as such a serious event; others justified it, and others remained silent. Mutual mistrust sprang up among them, and family ties were plainly weakened.

Change of guards: The abduction, incommunicado detention, disappearance, or death of a family member(s) especially the head of the house or a son, leads to a change in the usual roles within the family: women have to look for the missing person, flee, or get paying jobs with long hours in order to maintain the home; substitute the male members' work in agriculture and other non-conventional labour such as thatching roof, tilling field; children have to get dropped out from school and go to often exploitative labour; the older daughters, closest relatives, and neighbours replace the mothers in taking care of the younger brothers and sisters.

Socio-economic destitution: In many instances deaths and disappearances are connected to being economically challenged. Relatives see the lack of money as an obstacle to the search, to getting things done, having contacts. In a traditional rural society the loss of a son is equivalent to loss of pension. In other instances, death itself has led to notable erosion in the living standard of the family, causing a feeling of rejection and dependence, and turning daily life into a matter of existence.

Optimistic vibes: The signing of the CPA raised tremendous hope among the victims. Then the drafting of the two bills germinated new seed of trust and aspiration to seek justice which is likely to be shattered in the given situation of an undue political compromise. The survivors and the relatives believe in the benefit of caring and sharing that they experience from so many people who had gone through the same thing. The individuals and relatives who express that in the midst of all their suffering they always found energy and positive strength from a number of sources. Such encouragement helped many of them avoid death even when that was all they wanted. People forced themselves to come up with the strength despite their suffering. The civil society groups, local peace activists and rights defenders have been instrumental in giving them hope and desire although the later have deeply entrenched disenchantment, rage, and impotence over the way their experience has forced them to reassess social institutions.

Finally, some of them are ready to forgive, but they need to know who they have to forgive. They assert that if the government would just speak up and acknowledge who is the culprit, it would create an environment for the probability of the opportunity to forgive. There will be reconciliation only if there is justice, thus the formation of the two TJ commissions is vital to pave the proper way for lasting reconciliation.

ANNEX III.

Evaluation Questionnaires

1. Effectiveness

- To what extent have the project's objectives been reached?
- To what extent was the project implemented as envisaged by the project document? If not, why not?
- Were the project activities adequate to realize the objectives?
- What has the project achieved? Where it failed to meet the outputs identified in the project document, why was this?
- Have any significant developments taken place since the project started, if so, explain how they affected the project goal and activities and evaluate the impact on the project?

2. Relevance

- Were the objectives of the project in line with defined needs and priorities?
- Should another project strategy have been preferred rather than the one implemented to better reflect those needs and priorities? Why?
- Were risks appropriately identified by the projects? How appropriate are/were the strategies developed to deal with identified risks?

3. Sustainability

- To what extent has the project established processes and systems that are likely to support the continued implementation of the project?
- Are the involved parties willing and able to continue the project activities on their own (where applicable)?
- Are the project outcomes likely to be sustainable? If not, why not? Which remedial actions would have been good to take?

4. Project design and performance assessment/Efficiency

- Was the project design appropriate? If not, why not?
- Was the project, including its finances, human resources, monitoring, and oversight and support managed efficiently?
- What was the role played by the implementing agency (ies) and, where applicable, the executing agency in leveraging resources, internal or external, and expanding partnerships with other actors to support and expand this project?
- Assess the appropriateness of current formal and informal communication channels between national stakeholders, implementing and executing agencies and UNDEF staff, including recommendations for improvement

5. Impact

- To what extent has/have the realization of the project objective(s) had an impact on the specific
- Any significant problem the project aimed to address and on the targeted beneficiaries?
- To what extent the project has caused and is likely to cause changes and effects, positive and negative, foreseen and unforeseen, on society?
- Is the project likely to have a catalytic effect? How? Why? Please provide examples
- Have the needs of project beneficiaries been met by the project? If not, why not?

ANNEX IV.

TERMS OF REFERENCES (TOR)

Terms of Reference

Consultancy Service to Evaluate

Peace through Justice (PtJ) Project

Background

Transitional justice is a core element of the peace process in Nepal and forms part of the Comprehensive Peace Agreement (CPA) which provides for the creation of a Truth and Reconciliation Commission (TRC) and reaffirms the commitments towards the establishment of a Commission of Inquiry on Disappearances (CoI-D). These commissions are a concrete and formal acknowledgement that the legacy of the conflict needs to be addressed as part of the peace process including to establish truth, justice and reparations for the victims.

The Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) has been implementing the 'Peace through Justice' (PtJ) project since September 2009. The project will come to an end in December 2011. The United Nations Peace Building Fund (UNPBF) is financially supporting the project through the UN Peace Fund for Nepal (UNPFN). The overall objective of the project is to support the Government of Nepal (GoN) to establish effective and functioning transitional justice mechanisms which will strengthen the peace process and to promote a society built on respect for the rule of law and human rights by dealing with human rights and international humanitarian law violations committed during conflict.

Key outputs of the PtJ project include:

5. Ministry of Peace and Reconstruction (MoPR) conducting effective preparations for the creation of the Commissions and providing necessary support in the on-going work of the Commissions;

6. Transitional justice Commissions working effectively and in accordance with international human rights standards;
7. Mapping tools with research and analysis on conflict related international human rights and humanitarian law violations; and
8. Civil society and National Institutions are supporting the work of the Commissions.

Objectives of the PtJ Project Evaluation:

The main objective of the evaluation of PtJ project is to assess and examine the overall achievements under the project and their contribution to the peace-building process in Nepal.

The specific objectives of the evaluation are to:

- Examine the execution of PtJ project activities and its outcome achievements against the log frame in the project document and the UNPFN results framework;
- Assess the project's overall contribution to peace building and to potential impact in strengthening the peace process through supporting the GoN to establish effective transitional justice mechanisms as envisaged in the project document. This assessment will be conducted using the following analytical frameworks: the UNPFN M&E framework and UNPBF Performance Management plan;
- Analyze lessons learned with regards to transitional justice and peace-building in Nepal and provide recommendations on how the project's contribution to the peace process could be strengthened;
- Assess overall performance of the PtJ project in terms of technical, financial management and its processes;
- Additionally, the evaluation should analyze the following key elements:
 - the adoption of gender considerations in the project design and implementation;
 - the conflict sensitivity approach adopted in the project design and implementation;

- the complementarity of the project with the national strategies;
- the comparative advantage of the UN to implement this project.
- National legal expert will be responsible for reviewing documents, analyzing the progress, issues and challenges, draft selected chapters of the evaluation report as assigned by the team leader, and assist the international team leader to ensure the overall quality and timely submission of the evaluation report to the OHCHR Nepal.

Beneficiaries:

The evaluation will primarily help UN OHCHR to ensure more effective and efficient efforts to strengthen peace process in Nepal. More generally, the Nepali population may benefit from the result of the evaluation. In addition, the UNPFN Executive Committee, the UNPFN Support Office, the Government of Nepal, donors including UN Peace Building Fund will also receive the evaluation report.

Methodology/approach of Evaluation:

The final evaluation shall focus on the principles of relevance, efficiency and effectiveness based on the logical framework of the Project Document. The purpose of the external evaluation is also to ensure an objective and independent approach.

- The evaluation methodology will be based on desk reports, evaluations, direct consultations with stakeholders, and field missions to meet and consult with the beneficiaries.
- The desk review will ensure a participatory approach. It will gather information from all relevant groups/categories of stakeholders and beneficiaries who were affected by the activities of the project. The evaluation team will analyse existing documentation with particular attention to the project document, various implementation plans, progress reports (project and financial reports), mission reports and other official published/unpublished reports. Responsible/knowledgeable staffs in the project office and stakeholders, who have been involved in the course of project implementation,

should be consulted for in-depth information. They will consult local partners, other ongoing projects, donor stakeholders.

- As the information gathered from stakeholders is the most significant part for analysing the achievements of the project, the evaluation team shall develop an elaborate evaluation methodology so that various stakeholders and project beneficiaries are consulted and adequate interaction is made with them. Evaluation team will gather information from all the relevant groups/categories of stakeholders and beneficiaries who are affected by the interventions of the project.
- In addition, the evaluation team will take into consideration in its analysis, the social, economic and political developments related to the peace building process in Nepal. This is an important aspect of the evaluation process as these factors impact the performance of the project in one way or the other.

Stages/phases of Evaluation:

The evaluation should be completed within 20 days and the reporting frame will be as follow:

- Planning for evaluation assignment
- Desk Review
- Meetings/consultations
- Information collection and analysis
- Draft report submission
- Debriefing session with project 'stakeholders
- Incorporation of feedback
- Final report submission

The evaluation team will prepare a detailed work plan.

Deliverables expected:

- a. A preliminary report presenting inter alia methodology and timeframe;
- b. A first draft of the evaluation report, including an executive summary and recommendations (electronic version);
- c. A final report to be presented to OHCHR Nepal. The report should make a clear distribution between findings, conclusions and recommendations. The report must be in concise and clear English and will not exceed 25 pages excluding annexes and contain at least following sections:
 - The title of the evaluation
 - An executive summary of findings and conclusions
 - An Introduction
 - The design of the evaluation and the methodology
 - Presentation of the findings of the evaluation as per the five goals of the evaluation.
 - A presentation of the overall results achieved
 - The challenges and lesson learned
 - Conclusions and recommendations
 - References used for the evaluation
 - Annexes

Expertise required:

The expert should be of a multidisciplinary background (preferably human rights) and combine:

- Good knowledge of the Nepal peace process and experience of working in Nepal;

- Expertise in the field of project cycle management which should include at least project design, monitoring, reporting and evaluation;
- Strong expertise in the field of evaluation;
- Familiarity with the specificity of evaluation peace-building and transitional justice activities;
- Good knowledge of the UN system is an asset;

Education:

Advanced university degree in law, human rights or other relevant field.

Experience:

- At least seven years experience in peace building or human rights with experience in conducting evaluations.
- Excellent analytical and English report writing skill is essential.
- Experience with in the UN system and thorough understanding of gender and social inclusion issues in Nepal is an asset.

Duration:

The services of the National Consultant will be required for 15 days which includes field visits, submission and sharing of the first draft of the evaluation report and submission of the final report.

ANNEX V.

ANNEX VI.

LIST OF PERSON CONTACTED

- Dr. Gopal Krishna Siwakoti, President INHURED International
- Mr. Shyam Basyal, NSD
- Mr. Bedh Prakash Sharma,
- Mr. Bhola Nath Acharya
- Mr. Bimish Gautam, TJRC
- Mr. Birendra Thapalia, President FORHID
- Mr. Chudamani Acharya, Advocacy Forum
- Mr. Deepak Budha, Chairperson CYIC, Surkhet
- Mr. Dhani Ram Tharu, Member, CVC
- Mr. Dharma Adhikary, Secretary General, the Media Foundation
- Mr. Dhirendra Chettri, TJRC
- Mr. Dinesh Tripathi, TJRC
- Mr. Kaji Ram Roka, COSDER, Gorkha
- Mr. Kajiram
- Mr. Kashi Ram Dhungana, Representative Advocacy Forum
- Mr. Kiran Giri, Chetana Pariwar
- Mr. Krishna Chandra Ghimire, CDO, Banke
- Mr. Migendra Banstola, NSD
- Mr. Murari Kharel, NHRC, Nepalgunj
- Mr. Min Kunwar, WAC Achham
- Mr. Nabaraj Adhikari, TJRC
- Mr. Nayaram Khadka, Treasurer, CVC
- Mr. Om Pun, NSD
- Mr. Pandav Prasad Prasain, CPBRAC, Ramechhap
- Mr. Parwej Ali Siddiqui, UNESCO Club
- Mr. Prabhat Kiran Koirala, Staff, the Media Foundation
- Mr. Pradeep Pathak, KSL
- Mr. Prakash Mani Sharma
- Mr. Purna Bahadur Chowdhury, Executive Chairperson, CVC
- Mr. Rabi Thuladhar
- Mr. Ravi Nath Thakur. MAHURI Home
- Mr. Ram Krishna Bhusal, TJRC
- Mr. Ram Prashad Gautam, UNICEF
- Mr. Ram Sunuwar, TJRC
- Mr. Resham Khatri, Member LPC, Bardiya
- Mr. Resham Pariyar
- Mr. Rishikesh Wagle, JSN
- Mr. Sadhu Ram Sapkota, Joint Secretary, MoPR
- Mr. Shankar Singh Tharu, Banke UNESCO club
- Mr. Shanker Thapa, Rural Community Development Centre
- Mr. Tara Prasad Khatri, LPC, Nepalgunj
- Mr. Tulsi Bahadur Karki, Director FORHID
- Mr. Yagya Shahi, Ex programme Manager, Ptj
- Mr. Yagya Thapa, DFHRI
- Mr. Som Thapa, INSEC
- Ms. Aarati Rana, OHCHR
- Ms. Aitamaya Yonghang, Secretary, Local Peace Committee, Biratnagar

- Ms. Ambi K.C, TJRC
- Ms. Anne Sophie, UNDP, Kathmandu, Nepal
- Ms. Dil Maya Tamang, NSD
- Ms. Indira Bhattraï, Women Journalist Group
- Ms. Jun Kumari Pun, Ex Combatant, Nepalgunj
- Ms. Punita Rimal, Treasurer, the Media Foundation
- Ms. Ranjana Thapa, OHCHR
- Ms. Rashmina Shakya, NSD
- Ms. Reshma Thapa, Acting Head of Office ICTJ, Kathmandu Nepal
- Ms. Sanju Shah, Women Peace, Research and Development, Centre
- Ms. Shiva Maya Tumbahamphe, Women Human Rights Defenders Network
- Ms. Tej Kumari Tiwari, Chairperson, NSD
- Ms. Nibha Shrestha, OHCHR
- Mr. Balaram Adhikari, CIF, Kavre

ANNEX VII.

LISTS OF DOCUMENTS REFERRED

- OHCHR, 2009. Annual Programme Narrative Progress report, 1 September- 31 December 2009
- OHCHR,2010. Annual Programme Narrative Progress Report, 1 January-31 December 2010
- OHCHR, 2008. Project Proposal Submitted by OHCHR to The Executive Committee of the United Nations Peace Fund for Nepal.
- Internal monitoring and evaluation report –FMDC and UNESCO Banke by OHCHR
- Project proposal submitted by WVAF to establish TJRC to OHCHR
- Revised w/ plan of OHCHR with no cost extension (Sep- Dec 2011)
- UNPFN project evaluation guidance note
- Three quarterly report by OHCHR (Jan- Sep 2011)
- Revised logical framework of OHCHR
- Peace through justice , project fact sheet
- Internal monitoring and evaluation report –MAHURI Home, Kapilbastu
- Final narrative report by DFHRI
- Final Narrative report by ICTJ
- Final narrative report by OHCHR on behalf of CVC
- Final narrative report by CYIC

- Final narrative report by CPBRAC
- Final narrative report by HADC,RSC, COSDER
- Final narrative report by INHURED
- Final narrative report by FOHRID
- Final narrative report by ECDF
- Final narrative report by WAC
- Final narrative report by NRS, Darchula
- Final narrative report by WJWRG
- Final narrative report by CVSJ
- Final narrative report by GYC, Baglung
- Final narrative report by NSD
- Final narrative report by HURAC
- Final narrative report by FMDC
- Final narrative report by KSL
- Final narrative report by MAHURI home
- Final narrative report by Pro Public
- Final narrative report by CIF
- Final narrative report by NSD
- Final narrative report by MFN
- Final narrative report by Banke UNESCO club
- Final narrative report by CDECF