

International legal experts: TJ bill represents a transformational opportunity for Nepali justice - if details are strengthened and wider rule of law obstacles are overcome

- Nepal has a golden opportunity to be a global example in transitional justice.
- Wider rule of law issues have the potential to jeopardise the transitional justice process; these must be overcome to ensure its effectiveness.
- Independent lawyers note Nepal's human rights gains, while emphasising that dedicated technical and financial resources are required to ensure the efficacy of the justice system.
- Transitional justice holds the key to peace and stability for future generations only if its details tackle root causes, safeguard marginalised groups, and meet international human rights standards.
- Civil society a crucial partner in strengthening the rule of law and ensuring access to justice.

Kathmandu, 19 March 2024

This week an independent fact-finding mission of international human rights lawyers travelled to Nepal and met a range of government and civil society representatives to understand the challenges to the rule of law, including access to justice and independence of the judiciary. They recognised the great steps forward that Nepal has taken, but warned that transitional justice and human rights can only be guaranteed if broader obstacles to the rule of law are overcome.

*“Despite Nepal’s tremendous efforts to uphold international human rights standards, the delegation is of the view that there are wider rule of law issues in the country which present live obstacles to the effectiveness of a transitional justice process”, stated **Kishali Pinto-Jayawardena**.*

The delegation travelled to Kathmandu, Janakpur, Nepalgunj and Bardiya to meet victims of human rights violations, human rights defenders, NGOs, parliamentarians, lawyers, judges, law enforcement officers, and government officials. It heard about the strong potential of existing legal frameworks in Nepal, but also noted concerns that were raised. These related to whether existing processes effectively and meaningfully result in access to justice - including access to the truth, accountability, and reparations - for past and present crimes.

Aswini Weeraratne KC said, *“The transitional justice process, and its goals of truth-seeking, criminal justice, comprehensive reparation for victims, memorialisation and non-repetition are essential to enduring peace and stability in Nepal for generations to come.”*

General concerns expressed by stakeholders to the delegation included:

- Widespread implementation challenges, undermining the benefits which legislation and policies could bring.
- A perception of bias and politicisation of the judiciary.
- A lack of safeguards for victims of sexual and gender-based violence and torture, and a general reluctance to discuss these issues.
- The need to search for those forcibly disappeared and ensure access to justice, truth and legal recognition for their families.
- The question of equal and meaningful access of all Nepali victims to justice mechanisms, including members of minority, ethnic and indigenous groups.
- Shrinking civil society space, together with threats to human rights defenders and restrictions on NGOs, including through the provisions and application of the NGO Law.

- The importance of recognising and providing truth-seeking measures as a form of justice and reparations for victims; framed within, and inclusive of, local culture and tradition.
- Obstacles to justice and effective representation for marginalised groups including Dalit peoples, women, and Indigenous communities.

Camila Zapata Besso said *“The Nepali government has the chance to grasp this transformational and unique opportunity to address the root causes of the armed conflict, including the marginalisation of Dalit peoples and other minorities”*.

These issues were examined within the context of Nepal’s ongoing legislative efforts to finalise a transitional justice bill and institutions. The delegation’s mission coincided with the Federal Parliament’s consideration of the Transitional Justice Bill and following the Supreme Court’s order in regard to a 30-day timeline for recruiting and appointing commissioners of the Truth and Reconciliation Commission.

Regarding the transitional justice process in particular, concerns raised to the delegation included:

- Definitional issues in the TJ Bill in regard to human rights violations and gross violations of human rights seems inconsistent with international standards and may exclude actions amounting to international crimes
- Whether or not the appointment process and security of tenure for judges and commissioners (including TRC and CIEDP commissioners) can ensure independence and impartiality.
- A need for consistency and reliability in the consultation process for victims of human rights violations, to ensure justice mechanisms are meaningful and inclusive of marginalised groups and indigenous peoples.
- The process of collecting and preserving data and evidence collected from victims and other stakeholders.
- The equal and fair distribution of reparations and interim relief to victims of violations.

“It is critical for the Government of Nepal, the judiciary and national stakeholders to meticulously identify the technical expertise and financial resources that would enable the country to further enhance its human rights gains”, stated **Bruno Menzan**.

The delegation consisted of the following international lawyers:

- **Kishali Pinto-Jayawardena**, Constitutional Lawyer (Sri Lanka).
- **Aswini Weeraratne KC**, Human Rights Barrister and King’s Counsel (United Kingdom).
- **Bruno Menzan**, International Lawyer (Côte d’Ivoire).
- **María del Rosario Arango Zambrano**, International Lawyer and TJ Expert (Colombia).
- **Haydee Dijkstal**, Human Rights Barrister (The Netherlands and USA).
- **Camila Zapata Besso**, Human Rights Barrister (United Kingdom and Colombia).

The delegation is grateful to all stakeholders for their time and frankness, plus their willingness to share information and proposals regarding these important issues. In particular, the lawyers would like to acknowledge the strength and resilience of all victims in their search for justice, and recognise their courage in sharing their experiences and the harms they have suffered. They will analyse and consider all information before publishing a report, expected in July.

For questions on the delegation’s mission or mandate, please contact IDILNepal@proton.me. Delegates will be available for interview when their full report is published later this year.