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Nepal

Reconciliation does not mean impunity

A Memorandum on the Truth and Reconciliation Commission Bill



August 2007
AI Index: ASA 31/006/2007

TABLE OF CONTENTS

Introduction.....	1
I. Inadequate consultation with civil society.....	3
II. Insufficient guarantees of independence from the government and political parties.....	3
III. Limited mandate	5
IV. An easy way out for the perpetrators	7
a. Unlawful power of recommending amnesties for crimes under international law.....	8
b. “Reconciliation”: Which choice for the victims?	9
V. No attention to the rights of victims and witnesses	10
a. No support for participating in the TRC process	11
b. No effective protection for victims and witnesses.....	11
c. Unsatisfactory reparations.....	12
VI. Failure to provide that the Commission’s report will be published and its archives opened.....	13
Conclusion	14
Selected recommendations.....	15
Establishment	15
Mandate.....	15
Functions and powers	16
Operations and procedures.....	16
Final report and recommendations.....	17
Appendix I	18
A Bill Made for making provisions relating to Truth and Reconciliation Commission	18

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Reconciliation does not mean impunity - A Memorandum on the Truth and Reconciliation Commission Bill

Introduction

The Comprehensive Peace Accord agreed by the Government of Nepal and the Communist Party of Nepal (Maoist) on 21 November 2006 provided for the establishment of a Truth and Reconciliation Commission (TRC). The two sides pledged “to constitute a High-level Truth and Reconciliation Commission through the mutual agreement in order to investigate truth about those who have seriously violated human rights and those who were involved in crimes against humanity in course of the war and to create an environment for reconciliations in the society (*sic*)”.¹

In May 2007 the Ministry of Peace and Reconstruction formed a Working Group mandated to draft legislation necessary to establish a TRC.² A Bill “Made for making provisions relating to Truth and Reconciliation Commission (*sic*)” (TRC Bill) was finalized in July. An official translation into English was posted on the website of the Ministry of Peace and Reconstruction with an invitation for comments and suggestions.³ This Memorandum is based on that official translation, reproduced below (Appendix I).

Amnesty International welcomes the transparency shown by the government of Nepal in publicising the TRC Bill and its call for comments on its current provisions. This Memorandum examines the main aspects of the TRC Bill in the light of international human rights law and standards and offers some preliminary observations and recommendations which the organization hopes will contribute to the continuing debate on the composition, mandate, functions and powers of the proposed TRC.

Amnesty International recognises the decision to establish a Truth and Reconciliation Commission in Nepal as an important first step towards ensuring accountability for crimes

¹ Comprehensive Peace Accord Concluded Between the Government of Nepal and The Communist Party of Nepal (Maoist), 21 November 2006, number 5.2.5. Official English translation published on the website of the Ministry of Peace and Reconstruction of Nepal, http://www.peace.gov.np/admin/doc/CPA_eng-ver-corrected.pdf.

² Amnesty International understands that the Working Group was coordinated by Mr. Madhu Prasad Regmi, Joint Secretary of the Ministry of Peace and Reconstruction. Other members of the Working Group included: a representative of the Ministry of Home Affairs; a representative of the Law Reform Commission; a representative of the Office of the Attorney General of Nepal; advocates Ms. Puspa Bhusal and Kamala Mohan Wagle (appointed as experts).

³ Bill Made for making provisions relating to Truth and Reconciliation Commission (official translation into English): <http://www.peace.gov.np/admin/doc/TRC-English.doc> visited 30 July 2007.

under international law committed during the armed conflict and guaranteeing that victims of those crimes fully enjoy their rights to truth, justice and reparations. The organization believes that in contexts of political transition, either to peace or to a democratic regime, truth commissions can play an important role in providing a full account of past human rights violations, contributing to their investigation and eventual prosecution, preventing their repetition, and ensuring that victims and their relatives are provided with full reparation (including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition).

From 1974 to 2007, at least 34 truth commissions were established in 28 countries. More than half of these commissions have been established in the past ten years. Amnesty International has particularly followed the work of the truth commissions in Chile, Timor-Leste, Ecuador, El Salvador, Guatemala, Haiti, Liberia, Morocco, Nigeria, Peru, Sierra Leone, South Africa, Sri Lanka and Uruguay. Based on this experience, the organization published *Truth, justice and reparation: Establishing an effective truth commission* (AI Index POL 30/009/2007, June 2007), to which reference should be made for a more detailed discussion.

In this Memorandum, Amnesty International seeks to further apply such experience to an analysis of the current TRC Bill and, by providing a constructive critique, contribute to continuing discussions by government officials, parliamentarians and other interested parties in Nepal, as well as the international community.

I. Inadequate consultation with civil society

In relation to the process leading to the current formulation of the TRC Bill, Amnesty International is concerned that Nepalese civil society appear to have not been sufficiently involved from an early stage in the discussions on the establishment, mandate and powers of the Commission.

It appears that the establishment of the Working Group mandated to draft the TRC Bill was not sufficiently publicized, and that the short deadline imposed on the Working Group to complete its task, only one month, was insufficient for a comprehensive process of consultation with civil society and other interested parties.

While Amnesty International notes that, in addition to publicising the TRC Bill, the Ministry of Peace and Reconstruction has organized consultations with selected national and international organizations and experts, it is concerned that no broad process of consultation appears to have been organized with all those interested in the TRC process, including national and international civil society organizations, victims, human rights defenders, persons belonging to minorities and vulnerable groups, and others.

Amnesty International recommends that:

- The Nepalese government should allow sufficient time for a public debate of all aspects of the TRC Bill. All those concerned, including civil society organizations, both national and international, victims, human rights defenders and persons belonging to minorities and vulnerable groups should be fully involved in the discussions on the establishment, mandate and powers of the TRC. The Nepalese authorities should organize a comprehensive process of consultation with all sectors of civil society allowing sufficient time for study and reflection and seek the cooperation of institutions such as the office of the UN High Commissioner for Human Rights.

II. Insufficient guarantees of independence from the government and political parties

According to the TRC Bill, the seven members of the Commission will be appointed by the Government of Nepal, upon recommendation of a three-member committee constituted by the government with the consensus of the political parties having representation in Parliament. The nominees will include at least one woman and will be chosen from among, *inter alia*, human rights activists, psychologists, lawyers, civil society activists, “victims experts” and sociologists (section 4).

Amnesty International welcomes the efforts made to ensure that the candidates put forward by the nomination committee are competent in a broad variety of disciplines relevant to the work of the Commission and include human rights and civil society activists. The organization also welcomes the additional requirements for appointment: no membership of

any political party; high moral character; and commitment to human rights, democracy and rule of law (section 5).

However, Amnesty International is concerned that the process of nomination of the TRC members is led by a body open to political influence, does not involve any comprehensive consultation with civil society and does not offer sufficient guarantees of independence from the government. This concern is heightened by press reports that the government and Maoist representatives had started negotiating the selection of members of the Commission during the last days of July 2007, before legislation regulating the Commission is approved by Parliament.⁴

In addition, the inclusion of at least one woman among the candidate commissioners falls short of guaranteeing gender balance in the composition of the Commission.

Amnesty International recommends that:

- All those concerned, including civil society organizations, both national and international, victims, human rights defenders and persons belonging to minorities and vulnerable groups should fully and actively participate in the process of selection and appointment of the commissioners. They should suggest names and conduct a careful evaluation of the qualifications and experience of each candidate being considered.
- Members of the Commission should be selected on the basis of their competence in human rights and other relevant fields, proven independence and recognized impartiality. The composition of the Commission should reflect a fair balance of women and men and a pluralist representation of society.

Amnesty International is also concerned that a similar lack of sufficient guarantees of independence from the government characterizes the provisions regulating the Commission's staff recruitment. The TRC Secretary, responsible for the administrative aspects of its work, will be seconded from the Nepali judicial service (section 11). The TRC Bill does not require any independent process - or even consultation with the Commission - for this recruitment. Other personnel required for the Commission will be seconded from the government administration, upon consultation with the Commission but without an independent recruitment process. Only if the government of Nepal cannot second sufficient expert staff will the Commission be able to appoint its own personnel (section 12).

Amnesty International recommends that:

- Members of staff and experts engaged as consultants should be recruited on the basis of their competence, impartiality and independence. Gender balance should be ensured.

The need to obtain approval of the Nepalese government before receiving material or resources, including funding, from foreign agencies or associations may also hamper the Commission's independence (section 13).

⁴ "PM Koirala, Prachanda Discuss Current Issues", *The Himalayan Times*, online edition, 29 July 2007.

III. Limited mandate

Under the Bill, the Truth and Reconciliation Commission will have the mandate to investigate “gross violation of human rights and crimes against humanity” committed during the armed conflict between the Government of Nepal and the Communist Party of Nepal (Maoist) from the start of the Maoist insurgency (13 February 1996) to the conclusion of the Comprehensive Peace Accord (21 November 2006) (section 14 (1)). Amnesty International notes with concern that the mandate of the Commission does not include serious violations of international humanitarian law, and that the notions of “gross violation of human rights” and “crimes against humanity” are not defined in the TRC Bill.

Other provisions in the TRC Bill impose serious limitations on the Commission’s subject-matter mandate. The Commission cannot investigate on any matter already decided or being decided before a court in accordance with existing laws (section 15). This excludes from the mandate of the Commission all the cases of crimes under international law and other human rights violations in respect to which victims and their families sought remedy before the courts, whether or not such a remedy was effectively granted. For example, cases of enforced disappearance are excluded from the mandate of the Commission if family members filed writs of habeas corpus, whether or not they received from the courts a full and accurate account of the fate and whereabouts of their “disappeared” relative. This limitation to the mandate of the Commission is particularly serious in light of the prominence of enforced disappearances among the crimes committed during the armed conflict. It is an even more serious concern in the light of the fact that the habeas corpus petitions filed in the Supreme Court have generally been ineffective.⁵

Amnesty International recommends that:

- The mandate of the Commission must be broad, beyond acts that might constitute crimes under either national or international law. In particular, the investigations should concern all cases of past human rights violations and abuses (i.e. violations of both civil and political and economic, social and cultural rights), whether committed by government forces or by non-state actors, as well as violations of international humanitarian law.
- The mandate of the Commission should define human rights violations and crimes under international law in a way consistent with international law and standards. This may be done through amendments to national laws.

Several commissions of inquiry have been established in the past in Nepal to investigate into crimes under international law committed during the armed conflict. These commissions have generally been ineffective. Some commissions of inquiry have been established under the Commission of Inquiry Act, 1969, including the High Level Probe Commission established in May 2006 to investigate human rights violations committed between February 2005 and April 2006. A Supreme Court ruling of 1 June 2007 found that a commission of

⁵ See: Amnesty International, *Nepal: Human rights and security* (AI Index: ASA 31/01/2000), February 2000, p. 5-6 and 10; *Nepal: A spiralling human rights crisis* (AI Index: ASA 31/016/2002), April 2002, p. 21-26.

inquiry established under the Commission of Inquiry Act, 1969, would not be able to carry out an effective investigation into human rights violations such as enforced disappearance.⁶ In the light of such a finding, the work and results of past inquiry bodies need to be reviewed.

Amnesty International recommends that:

- The mandate of the TRC should include a review of the work and results of past investigative bodies.

The overlapping of the Commission's mandate with the mandate of other inquiry and human rights bodies may create serious operational problems.

In June 2007 the Government of Nepal established a High Level Commission of Inquiry on Disappeared Persons (HLCIDP or Commission on Disappeared Persons), to investigate into enforced disappearances committed in Nepal between 13 February 1996 and 21 November 2006. According to the information publicly available on the Commission on Disappeared Persons, such a Commission and the TRC would have the same temporal mandate. The subject-matter mandate of the Commission on Disappeared Persons would be within in the mandate of the TRC. During their operations, the two bodies may find themselves investigating the same cases and interviewing the same witnesses. At the end of their work, the two bodies may have competing or conflicting recommendations. At any time, the Nepalese public may experience confusion about the two bodies' respective functions and powers.

Notwithstanding the Supreme Court order of 1 June 2007, the **Commission on Disappeared Persons** was established under the Commission of Inquiry Act 1969. Both the Office of the UN High Commissioner for Human Rights in Nepal and some international NGOs expressed concerns that the Commission did not meet international standards.⁷ According to press reports, the government then decided to submit the draft terms of reference of the Commission to the office of the Attorney General for a legal opinion.⁸

Amnesty International is concerned that the Commission on Disappeared Persons was established under a law that the Nepalese Supreme Court had already found to fall short of international standards. To the extent that the establishment of a Commission on Disappeared Persons is confirmed, its composition, mandate and powers should follow international standards.

Amnesty International therefore recommends that:

- The respective mandate of the TRC and the Commission on Disappeared Persons and the modalities of their cooperation should be clarified.

⁶ *Dakhal and Ors. v. Ministry of Home Affairs and Ors.*, Supreme Court Division Bench, Order of 1 June 2007 [Regarding question no. 4].

⁷ OHCHR, "OHCHR-Nepal Calls for Disappearance Commission of Inquiry Which Meets International Human Rights Standards", press release, 5 July 2007. International Commission of Jurists, "Nepal: ICJ urges Government to ensure "High level Commission of inquiry on Disappeared Citizens" meets international standards and complies with Supreme Court order", press release, 16 July 2007.

⁸ "Commission on disappearance in limbo", Kantipuronline.com, 23 July 2007.

According to the Interim Constitution, the National Human Rights Commission is mandated, among other functions, to investigate human rights violations and violations of international humanitarian law and to recommend actions against the perpetrators.⁹ In particular, the National Human Rights Commission established under the Interim Constitution would have to receive the pending petitions and complaints filed to the existing National Human Rights Commission, established in 2000.¹⁰ Some of these petitions and complaints may concern facts that occurred during the temporal mandate of the TRC.

Amnesty International recommends that:

- The TRC Bill should clarify the temporal mandate of the Truth and Reconciliation Commission with respect to the temporal mandate of the National Human Rights Commission. The two bodies should cooperate in order to ensure that investigative efforts are not duplicated, that information is shared effectively and that the public is correctly informed about their respective functions and powers.

In addition to clarifying the facts about past human rights violations, the TRC should draw an historical picture of the factors allowing human rights violations to occur, such as the broad institutional structures, policies and practices of the armed and security forces, the possible links of armed groups with foreign countries, etc.

IV. An easy way out for the perpetrators

“[Prosecutions] are often the logical outcome of a truth commission and an obligation upon states under international law – whether explicitly spelt out in the peace accord or not”.

Louise Arbour, UN High Commissioner for Human Rights
visiting Nepal¹¹

Amnesty International is particularly concerned that no part of the TRC Bill explains that the work of the TRC should be followed by prosecutions, and that evidence collected by the Commission should be handed over to judicial authorities with the aim of bringing perpetrators to justice. At present, if the Commission’s investigations result in the establishment of a *prima facie* case of individual criminal responsibility, the Commission has the power to choose one of three possible actions:

- a. If the suspected perpetrator is found to have committed gross violations of human rights or crimes against humanity (with certain exceptions – see below) while

⁹ Interim Constitution of Nepal, 2063 (2007), available at http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf, article 132.

¹⁰ *Ibid.*, article 163.

¹¹ Quoted in “Arbour appeals for consolidating the change through durable peace, social justice and democracy”, nepalnews.com, 22 January 2007.

“abiding by his/her duties or with the objective of fulfilling political motives”, the Commission has the power to recommend amnesty (section 25);

- b. Whatever the crime allegedly committed by the suspected perpetrator, the Commission has the power to initiate procedures for “reconciliation” between the suspected perpetrator and the victim/s (section 23);
- c. The Commission can recommend “necessary action” against the suspected perpetrator (section 24) – but not in cases where “reconciliation” has been reached.

a. Unlawful power of recommending amnesties for crimes under international law

The TRC Bill grants the Commission the power to recommend amnesty for those perpetrators who committed gross violations of human rights or crimes against humanity “in course of abiding by his/her duties or with the objective of fulfilling political motives”, with the only exception of perpetrators involved in: “any kind of murder committed after taking under control or carried out in a inhumane manner”; “inhumane and cruel torture”; and rape. To this purpose, the perpetrator needs to submit an amnesty application in writing showing regret for his or her acts (section 25 (1) to (4)). The final decision with respect to the granting of amnesty will be taken by the government of Nepal. The cases of those perpetrators whose amnesty is denied will be transmitted to the Office of the Attorney General for “needful actions” (section 28 (2) (a)).

Amnesty International recommends that:

- As required under international law, the Commission should not recommend amnesties or similar measures of impunity with respect to crimes under international law. Section 25 (2) of the TRC Bill must be amended to exclude recommendations for amnesty for crimes under international law such as genocide, crimes against humanity, war crimes, extra-judicial killings, enforced disappearances and torture.

Amnesty International is gravely concerned that, as they stand now, the provisions in section 25 of the TRC Bill violate Nepal’s obligations under international law. Amnesties for crimes under international law are prohibited, as they deny the right of victims to justice.¹² All states have an obligation to prosecute and punish perpetrators of crimes such as genocide, crimes against humanity, war crimes and other crimes under international law. This obligation includes investigating those crimes and, where there is sufficient admissible evidence, prosecuting suspected perpetrators in trials that meet international standards of fairness, without the death penalty or other cruel, inhuman or degrading punishment being imposed. As a precondition, national law should define genocide, crimes against humanity, war crimes and

¹² See: Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law* (AI Index: AFR 51/012/2003), October 2003.

other crimes under international law in a manner consistent with the strictest requirements of international law.

International human rights bodies have consistently affirmed that the establishment of a truth commission does not relieve states from their obligation to prosecute crimes under international law.¹³ The United Nations recently refused to cooperate with the Commission of Truth and Friendship, jointly established by Indonesia and Timor Leste, because the Commission's terms of reference envisage the possibility that it may recommend amnesty, and do not preclude it from making such a recommendation in respect of acts that constitute a crime against humanity, a gross violations of human rights or a serious violations of international humanitarian law.¹⁴ In December 2006 the Constitutional Court of Indonesia declared as not having binding legal force the law establishing a Truth and Reconciliation Commission, *inter alia* because it included a procedure for granting amnesty to perpetrators of crimes under international law.¹⁵

Amnesty International recommends that:

- The Commission should have the power to inquire into credible evidence indicating individual criminal responsibility. It should forward its findings (on a confidential basis) to the relevant prosecution authorities for further investigation, with a view to bringing the suspected perpetrators to justice without delay.

b. “Reconciliation”: Which choice for the victims?

The TRC Bill gives the Commission the power to organize “reconciliation” processes or ceremonies, by which a suspected perpetrator meets with the victim, makes an apology and provides reparation for the loss and damage caused (section 23).

The “reconciliation” process leads to a *de facto* amnesty, because “necessary action” cannot be recommended by the Commission if the perpetrator and the victim have been involved in a “reconciliation” procedure (section 24 (2)). In this sense, the “reconciliation” procedure violates Nepal’s obligations under international law in the same way as the amnesty provisions discussed above.

Amnesty International recommends that:

¹³ See: Amnesty International, *Truth, justice and reparation: Establishing an effective truth commission* (AI Index POL 30/009/2007), June 2007, p. 18-21.

¹⁴ UN Secretary-General, “Secretary-General says UN officials will not testify at Timor-Leste Commission, as terms of reference include possible amnesty for human rights violations”, UN Doc. SG/SM/11101, 26 July 2007.

¹⁵ Constitutional Court of the Republic of Indonesia, Decision on the Petition for Judicial Review on the law of the Republic of Indonesia no. 27/2004 concerning Truth and Reconciliation Commission against the 1945 Constitution of the Republic of Indonesia, 8 December 2006.

- Section 24 (2) of the TRC Bill must be amended to ensure that, where there is sufficient admissible evidence, the Commission will recommend that suspected perpetrators are prosecuted in trials that meet international standards of fairness, without the death penalty or other cruel, inhuman or degrading punishment being imposed - notwithstanding the outcome of “reconciliation” procedures.

In addition, Amnesty International has specific concerns with respect to the role of victims and perpetrators in the “reconciliation” procedures. At present, nothing in the TRC Bill guarantees that victims will not be coerced into “reconciliation” procedures, including by believing to be under a legal requirement to be involved in such practices.

Amnesty International recommends that:

- If the Commission decides to adopt specific procedures to promote individual reconciliation, it must ensure that they fully respect the rights and dignity of both victims and alleged perpetrators. In particular, victims and their families should not be threatened, harassed or otherwise forced to meet alleged perpetrators, or to engage in any act of reconciliation. They must be made fully aware that they are under no legal requirement to be involved in a “reconciliation” procedure and that they can choose to seek remedy before a court instead or in addition to this process.

V. No attention to the rights of victims and witnesses

“It’s an additional insult to [victims’ families] to have a system that is totally dismissive, totally unresponsive to their quest for the truth, for answers”.

Louise Arbour, UN High Commissioner for Human Rights
visiting Nepal¹⁶

Amnesty International is seriously concerned that, overall, the TRC Bill designed the Commission as a process to allow perpetrators of crimes under international law to “confess” without fear of punishment. The needs of victims are superficially, if at all, taken into account. For example, the TRC Bill does not include any provision to ensure that victims are treated with humanity and are not re-traumatized.

Amnesty International recommends that:

- The TRC Bill should include broad provisions to ensure that victims are treated with humanity. To ensure that victims are not re-traumatized, all representatives of the Commission who come into contact with victims, including commissioners, staff and others, should be comprehensively trained in dealing with victims of serious crimes, including victims of sexual violence and violence against children.

¹⁶ Quoted in “UN urges Nepal war crimes trial”, news.bbc.co.uk, 24 January 2007.

a. No support for participating in the TRC process

Investigation by the Commission can be triggered by any complaint by, or on behalf of, a victim (section 14 (1) (a)). However, any complaint may be “de-listed” if it is found baseless or if it “cannot be implemented” (section 22). While the criteria to decide whether a complaint “cannot be implemented” need to be clarified, the option to “de-list” a complaint raises concern, as it may result in additional frustration for the victims and their families.

Amnesty International recommends that:

- The Commission should provide special measures to assist victims and witnesses, especially those that are traumatized, children, elderly or victims of sexual violence, in presenting views and concerns, registering their case, participating and giving testimony.
- Special measures should be designed to ensure the proper treatment of child victims and victims of sexual violence and to ensure that they are provided with adequate protection and support services.

b. No effective protection for victims and witnesses

The TRC Bill includes one provision on the protection of victims and witnesses (section 18). Although the provision is broadly formulated, requiring the Commission to make necessary arrangements for the security of victims and witnesses, concerns remain about its effective implementation.

Amnesty International recommends that:

- The TRC Bill should ensure the protection of victims and witnesses who may be at risk as a result of their participation in the process. A comprehensive, long-term and effective victims and witnesses protection program should be devised prior to the initiation of any investigation and then implemented as soon as the investigations begin.

Protection measures should be available for all witnesses, victims and their families, staff and others associated with the investigation. In determining which protection measures to take, the Commission should take into account the views of the victims and witnesses on which measures they require and whether the protection measures are proportionate to the seriousness of the risk. The commissioners should be responsible for overseeing the implementation of all protection measures and a procedure should be established whereby a victim who is not satisfied with protection measures may apply to the commissioners to address the issue.

Protection measures should not be restricted to concealing the identities of victims and witnesses who request it. They may include seeking restraining orders against anyone who poses a threat to the victim or witness or to their family, organizing police protection, safeguarding the whereabouts of the victim or witness and their family from disclosure and

providing them with medical and psychological treatment and support. In some cases, such protection measures will need to be long-term and can require relocation and new identities for the victim or witness and their families.

The Commission should have the power to require the relevant authorities to suspend from duty officials allegedly involved in the human rights violations under investigation, or to transfer them to other duties where they would have no power over victims or witnesses (without prejudice pending completion of the investigations), if there is reason to believe that they may interfere with victims or witnesses or otherwise interfere with the investigation. The government of Nepal should make an explicit undertaking that it will ensure compliance with the commission's requests to that effect.

A victims and witnesses protection program will need sufficient resources to succeed. Other bodies that have established a victims and witnesses protection program, as well as international institutions such as UNICEF, may be consulted in developing and implementing such a program.

c. Unsatisfactory reparations

The current TRC Bill makes the granting of reparation conditional on victims' participation into "reconciliation" processes (section 23 (3)). Such conditionality is of concern in itself, as the right to reparation is unconditional. Coupled with the *de facto* amnesty that can be recommended for perpetrators involved in a "reconciliation" procedure, the conditionality of reparation creates a process by which victims will have to trade their right to reparation against impunity for the perpetrators.

Outside the "reconciliation" processes, the Commission has the power to recommend to the Nepalese government reparations for the victims, which include: free education and health-care facilities; skill-oriented training; loan facilities without or with concessional interests; arrangements of habitation; and employment facilities (section 26). Amnesty International is concerned that the forms of reparation indicated in section 26, although a non-exhaustive list, do not cover the full range of reparations to which victims of gross human rights violations and serious violations of international humanitarian law are entitled: restitution, compensation, rehabilitation, satisfaction and guarantees of non repetition.¹⁷

The organization recommends that:

- Throughout the process, the Commission should collect views from victims about what forms of reparation they require to rebuild their lives. In addition to measures of rehabilitation, compensation and satisfaction, the Commission should recommend a broad range of other reparations for victims. These include measures that would prevent

¹⁷ Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147, principles 19 to 23.

repetition of past violations, such as reforming laws, administrative procedures and practice; strengthening the justice system; and promoting human rights education.

- The provision of full and effective reparation for the victims and their families should not be conditional to participation into any “reconciliation” process. Any recommendation made for reparation should never be seen as a substitute for bringing those responsible to justice or preclude victims also seeking compensation through the courts.

VI. Failure to provide that the Commission’s report will be published and its archives opened

Under the Bill, the Commission will submit its final report to the government of Nepal, which will then present it to Parliament (section 27). The responsibility for the implementation of the report will lie with the Ministry of Peace and Reconstruction (section 28). The National Human Rights Commission will have the task of monitoring the implementation of the recommendations made in the report (section 31).

It is a matter of serious concern that the TRC Bill does not include any guarantee that the report be made public, nor it determines any deadline for its submission to Parliament. As the report may not be released to the public, civil society and the Nepalese society as a whole have no means either to know the findings of the Commission’s inquiry, or to monitor the implementation of its recommendations.

Amnesty International recommends that:

- The results of the Commission’s investigations and its recommendations should be officially proclaimed, published and widely disseminated without undue delay.

After dissolution of the Commission, the Ministry of Peace and Reconstruction will receive all its documents, including its archives (section 37 (2)). Nothing in the TRC Bill guarantees that the archives will be opened to the public, and that evidence collected by the Commission will be used for criminal prosecutions. The right to truth implies that archives must be preserved and made public.¹⁸

- The Commission’s archives should be made and remain public after the end of its mandate. The Commission should establish at the outset if its work the conditions that will govern access to its documents, including conditions aimed at preventing disclosure of confidential information while facilitating public access to its archives.

¹⁸ Updated Set of principles for the protection and promotion of human rights through action to combat impunity, Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, Principles 14 to 18.

Conclusion

Both sides of the armed conflict in Nepal pledged to end impunity and to provide truth, justice and reparation to the victims of the conflict. In the Comprehensive Peace Accord they articulated the commitment:

“that impartial investigation and action as per the law would be carried out against the people responsible in creating obstructions to the exercising of the rights envisaged in the letter of agreement and guarantee not to encourage impunity. Apart from this, they shall also guarantee the right to relief of the families of the conflict and torture victims and the disappeared”.¹⁹

In addition, the Interim Constitution lists among the responsibilities of the state

“to adopt a political system which fully abides by the universally accepted concept of fundamental human rights, ... and to maintain good governance by eliminating corruption and impunity”.²⁰

The Preamble of the TRC Bill includes among the aims of the Commission the objective

“to bring impunity to an end by bringing the persons involved in gross violation[s] of human rights and crimes against humanity... within the confinements of law and also to make all aware that such acts would be punishable in future too”.

Following its analysis of the TRC Bill, Amnesty International is concerned that the present Bill does not realize the objectives of the Accord with respect to either truth-seeking or ending impunity. As described above, the organization believes that the Commission, as currently proposed, would not be sufficiently independent from the government to carry out its work effectively. In addition, the lack of provisions requiring the Commission to publish its findings and to open its archives threatens to compromise its truth-seeking function.

Amnesty International believes that the Commission’s current terms of reference are in violation of international law with respect to the power of recommending amnesty. Rather than ensuring reparations to the victims of serious human rights violations and their families, the Commission provides an opportunity for perpetrators to escape justice for the worst possible crimes.

Amnesty International calls for any Truth and Reconciliation Commission in Nepal to uphold the right of victims of past human rights violations to obtain truth, justice and reparation. To this end, the TRC should: clarify as far as possible the facts about past human rights violations; course the evidence they gather into continuing and new investigations and criminal judicial proceedings; and formulate effective recommendations for providing full reparation to all the victims and their relatives. The TRC should never be a substitute for a

¹⁹ Comprehensive Peace Accord, *supra*, number 7.1.3.

²⁰ Interim Constitution, *supra*, article 33(c).

judicial process to establish individual criminal responsibility or for full reparations to be provided.

Selected recommendations

Establishment

- The Nepalese government should allow sufficient time for a public debate of all aspects of the TRC Bill. All those concerned, including civil society organizations, both national and international, victims, human rights defenders and persons belonging to minorities and vulnerable groups should be fully involved in the discussions on the establishment, mandate and powers of the TRC. Nepalese authorities should organize a comprehensive process of consultation with all sectors of civil society allowing sufficient time for study and reflection and seek the cooperation of institutions such as the office of the UN High Commissioner for Human Rights.
- All those concerned, including civil society organizations, both national and international, victims, human rights defenders and persons belonging to minorities and vulnerable groups should also fully and actively participate in the process of selection and appointment of the commissioners. They should suggest names and conduct a careful evaluation of the qualifications and experience of each candidate being considered.
- Members of the Commission should be selected on the basis of their competence in human rights and other relevant fields, proven independence and recognized impartiality. The composition of the Commission should reflect a fair balance of women and men and a pluralist representation of society.
- Members of staff and experts engaged as consultants should be recruited on the basis of their competence, impartiality and independence. Gender balance should be ensured.

Mandate

- The mandate of the Commission must be broad, beyond acts that might constitute crimes under either national or international law. In particular, the investigations should concern all cases of past human rights violations and abuses (i.e. violations of both civil and political and economic, social and cultural rights), whether committed by government forces or by non-state actors, as well as violations of international humanitarian law.
- The mandate of the Commission should define human rights violations and crimes under international law in a way consistent with international law and standards. This may be done through amendments to national laws.
- The mandate of the TRC should also include a review of the work and results of past investigative bodies.

- The respective mandate of the TRC and the Commission on Disappeared Persons and the modalities of their cooperation should be clarified.
- The TRC Bill should clarify the temporal mandate of the Truth and Reconciliation Commission with respect to the temporal mandate of the National Human Rights Commission. The two bodies should cooperate in order to ensure that investigative efforts are not duplicated, that information is shared effectively and that the public is correctly informed about their respective functions and powers.

Functions and powers

- As required under international law, the Commission should not recommend amnesties or similar measures of impunity with respect to crimes under international law. Section 25 (2) of the TRC Bill must be amended to exclude recommendations for amnesty for crimes under international law such as genocide, crimes against humanity, war crimes, extra-judicial killings, enforced disappearances and torture.
- The Commission should have the power to inquire into credible evidence indicating individual criminal responsibility. It should forward its findings (on a confidential basis) to the relevant prosecution authorities for further investigation, with a view to bringing the suspected perpetrators to justice without delay.
- Section 24 (2) of the TRC Bill must be amended to ensure that, where there is sufficient admissible evidence, the Commission will recommend that suspected perpetrators are prosecuted in trials that meet international standards of fairness, without the death penalty or other cruel, inhuman or degrading punishment being imposed - notwithstanding the outcome of “reconciliation” procedures.

Operations and procedures

- If the Commission decides to adopt specific procedures to promote individual reconciliation, it must ensure that they fully respect the rights and dignity of both victims and alleged perpetrators. In particular, victims and their families should not be threatened, harassed or otherwise forced to meet alleged perpetrators, or to engage in any act of reconciliation. They must be made fully aware that they are under no legal requirement to be involved in a “reconciliation” procedure and that they can choose to seek remedy before a court instead or in addition to this process.
- The Bill should include broad provisions to ensure that victims are treated with humanity. To ensure that victims are not re-traumatized, all representatives of the Commission who come into contact with victims, including commissioners, staff and others, should be comprehensively trained in dealing with victims of serious crimes, including victims of sexual violence and violence against children.
- The Commission should provide special measures to assist victims and witnesses, especially those that are traumatized, children, elderly or victims of sexual violence, in presenting views and concerns, registering their case, participating and giving testimony.

- Special measures should be designed to ensure the proper treatment of child victims and victims of sexual violence and to ensure that they are provided with adequate protection and support services.
- The TRC Bill should ensure the protection of victims and witnesses who may be at risk as a result of their participation in the process. A comprehensive, long-term and effective victims and witnesses protection program should be devised prior to the initiation of any investigation and then implemented as soon as the investigations begin.

Final report and recommendations

- Throughout the process, the Commission should collect views from victims about what forms of reparation they require to rebuild their lives. In addition to measures of rehabilitation, compensation and satisfaction, the Commission should recommend a broad range of other reparations for victims. These include measures that would prevent repetition of past violations, such as reforming laws, administrative procedures and practice; strengthening the justice system; and promoting human rights education.
- The provision of full and effective reparation for the victims and their families should not be conditional to participation into any “reconciliation” process. Any recommendation made for reparation should never be seen as a substitute for bringing those responsible to justice or preclude victims also seeking compensation through the courts.
- The results of the Commission’s investigations and its recommendations should be officially proclaimed, published and widely disseminated without undue delay.
- The Commission’s archives should be made and remain public after the end of its mandate. The Commission should establish at the outset if its work the conditions that will govern access to its documents, including conditions aimed at preventing disclosure of confidential information while facilitating public access to its archives.

Appendix I

A Bill Made for making provisions relating to Truth and Reconciliation Commission

Preamble:

Whereas it is expedient to establish an independent and impartial Truth and Reconciliation Commission to bring the actual facts to the public by investigating the truth on persons involved in gross violation of human rights and crimes against humanity during the course of armed conflict;

To bring impunity to an end by bringing the persons involved in gross violation of human rights and crimes against humanity by bringing them within the confinements of law and also to make all aware that such acts would be punishable in future too;

To demonstrate a justiciable conduct by the State by making arrangements for compensations in the form of reparations to the victims of armed conflict; and

To create an environment of conciliation in the society by enhancing mutual good wishes, tolerance and fraternity among the victims, perpetrators and their families;

Now, therefore, the Legislature-Parliament has made this Act.

Chapter-1 Preliminary

1. Short Title and Commencement:

- 1) This Act may be cited as the "Truth and Reconciliation Act, 2064(2007)".
- 2) This Act shall come into force on the forty-fifth day of its certification.

2. Definitions:

Unless the subject or the context otherwise requires, in this Act:

- a) "Commission" means the Truth and Reconciliation Commission established pursuant to Section 3.
- b) "Chairperson" means the Chairperson of the Commission.

- c) "Member" means the member of the Commission and the word also includes the Chairperson.
- d) "Secretary" means the secretary of the Commission.
- e) "Armed Conflict" means the armed conflict carried out between the government and the C.P.N. (Maoist) from February 13, 1996 to November 21, 2007.
- f) "Victim" means a person either killed or physically, mentally or economically injured as a result of incidents related to gross violation of human rights or crimes against humanity during the course of armed conflict.
- g) "Perpetrator" means a person involved in gross violation of human rights or crime against humanity.
- h) "Family" means husband, wife, son, daughter, father, mother father-in-law, mother-in-law, grand father, grand mother, grand son, grand daughter or brother or sister of the victim living as a single family.
- i) "Complaint" means an application also.
- j) "Ministry" means the Ministry of Peace and Reconstruction.
- k) "Fund" means the Reconciliation and Peace Building Fund established pursuant to Section 29.
- l) "Prescribed" or "As Prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter-2

Establishment and Formation of the Commission

3. Establishment of the Commission: (1) The Truth and Reconciliation Commission is hereby established for, *inter alia*, investigation of facts about persons involved in gross violation of human rights and crimes against humanity during the course of armed conflict and establishment of an environment of reconciliation in the society.

(2) The central office of the Commission shall be located in Kathmandu valley and the Commission may, as per necessity, establish its offices at different places in Nepal.

4. Formation of the Commission: (1) The Commission shall consist of not more than seven members including the Chairperson.

(2) The Government of Nepal shall, with consensus of the political parties having representation in the Legislature-Parliament, constitute a three-member committee to make

recommendations for the appointment of the Chairperson and Members; and the Government of Nepal shall, upon the recommendation of such committee, may appoint the Chairperson and Members.

(3) The Committee as referred to in Sub-section (2) shall make recommendations for the appointment of the Chairperson and Members, including at least a woman, from amongst, *inter alia*, human rights activists, psychologists, lawyers, civil society activists, victimologists and sociologists,.

(4) The working procedures of the committee as referred to in Sub-section (2) shall be determined by committee itself.

5. Qualification of the Chairperson and Members: Following person shall be deemed eligible for appointment to the post of Chairperson and Member:

- a) Who is not member of any political party;
- b) Who has maintained a high moral character;
- c) Who is committed to human rights, democracy and rule of law.

6. Disqualification for Chairperson and Members: Following person shall be deemed ineligible for appointment to the post of Chairperson and member:

- a. Who is not a Nepali citizen;
- b. Who is directly or indirectly involved in the armed conflict;
- c. Who is convicted by a court on criminal offence involving moral turpitude;
- d. If s/he is insolvent;
- e. If s/he is insane.

7. Term of Office: (1) The Chairperson and Members shall remain in their respective posts till the dissolution of the Commission pursuant to Section 37.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or Member shall *ipso facto* be relieved from his/her post, if a two-thirds majority of the total members of the Special Committee on Parliamentary Hearings of the Legislature-Parliament or the Constituent Assembly adopts a resolution presented before it to relieve such Chairperson or Member on charge of failing to honestly dispense positional duties, lack of working-efficiency or being involved in bad conduct.

Provided, however, that such an accused Chairperson or Member shall not be deprived of an opportunity to defend himself/herself.

8. Conditions for the Vacancy of the Post: (1) The post of Chairperson or Member shall be deemed vacant on following conditions:

- a. If s/he tenders a resignation to the Prime Minister;
- b. If s/he is deemed disqualified to remain in his/her post pursuant to Section 6;
- c. If s/he is relieved from his/her post pursuant to Section 7;
- d. If s/he dies.

(2) If the post of Chairperson or Member falls vacant for any reasons, the vacant post shall be fulfilled by following the processes as referred to in Section 4.

9. Conditions of Services for the Chairperson and Members and Other Provisions:

- (1) The Chairperson and Members shall be full-time working officials of the Commission.
- (2) The remunerations, conditions of services and benefits of the Chairperson and Members shall be as determined by the Government of Nepal.

10. Meetings and Decisions of the Commission: (1) The meeting of the Commission may be held upon necessity.

- (2) The meeting of the Commission shall be held on such place, date and time as designated by the Chairperson.
- (3) The quorum for the meeting of the Commission shall be deemed fulfilled, if more than fifty percent of the total members of the Commission are present.
- (4) The meeting of the Commission shall be chaired by the Chairperson; and in his/her absence the Member chosen by the Members from amongst themselves shall chair the meeting.
- (5) A decision by majority shall prevail in the meeting of the Commission; and in case of a tie, the person chairing the meeting shall cast the deciding vote.
- (6) The Secretary shall function as the secretary of the meeting of the Commission as well.
- (7) The minutes of the meeting of the Commission shall be certified by the Secretary.
- (8) The Commission may, if so desires, invite native or foreign experts on matters related to the activities of the Commission in the meeting of the Commission.
- (9) Other procedures related to the meeting of the Commission shall be as determined by the Commission itself.

11. Secretary: (1) There shall be a Secretary in the Commission as an administrative chief for the dispensation of works of the Commission.

(2) A civil servant working as a special class officer of the Nepal Judicial Service shall function as the secretary of the Commission.

12. Personnel of the Commission: (1) the Government of Nepal shall make available personnel required for the Commission. While making personnel available in such a manner, the Government of Nepal shall have to consult with the Commission.

(2) Notwithstanding anything contained in Sub-section (1), the Commission may appoint its personnel on a contract basis, if the Government of Nepal does not have the expert personnel as demanded or the Government of Nepal is unable to provide required number of personnel as demanded by the Commission.

(3) The functions, duties and powers, term of office, remuneration and benefits of the personnel appointed pursuant to Sub-section (2) shall be as determined by the Commission.

(4) The personnel working with the Commission pursuant to Sub-section (1) shall receive allowance and other benefits as determined by the Commission.

13. Resources, Materials and Examination of Accounts of the Commission: (1) The Government of Nepal shall make arrangements for building, materials and other resources required for the functioning of the Commission.

(2) Notwithstanding anything contained in Sub-section (1), the Commission may avail required materials and resources in the form of grant from foreign agencies or associations, if the materials and resources provided by the Government of Nepal are not sufficient.

Provided that the Commission shall obtain an approval of the Government of Nepal prior to receiving of materials or resources from foreign agencies or associations.

(3) The Commission shall deposit any amount obtained to it pursuant to Sub-section (1) or (2) by opening an account in any commercial bank.

(4) All the expenses of the Commission shall be borne from the amount deposited pursuant to Sub-section (3).

(5) The account of income and expenditure of the Shall be maintained in accordance with the existing laws.

(6) The examination of accounts of the Commission shall be made by the Auditor General.

Chapter-3

Functions, Duties and Powers of the Commission

14. Power to Inquire and Investigate on Complaints: (1) The Commission may, on following bases, carry out inquiries and investigations on incidents of gross violation of human rights and crimes against humanity during the course of armed conflict:

- a. If a complaint is lodged to the Commission by, or, on behalf of, the victim;
- b. If the Commission receives any information on such matter through any source;
- c. If the Commission deems appropriate to inquire and investigate on such matter.

(2) Other provisions relating to lodging of complaints before the Commission pursuant to Sub-section (1) shall be as prescribed.

15. Commission not to have Powers: Notwithstanding anything contained in Section 14, the Commission shall not have power to inquire and investigate on following matters:

- a. Any matter already decided in accordance with existing laws;
- b. Any matter subjudice to the court in accordance with existing laws;
- c. Any matter relating to incidents of gross violation of human rights or crime against humanity before or after the armed conflict.

16. Powers of the Commission relating to Examination: (1) The Commission may, in relation to carrying out following acts in course of inquiries and investigations pursuant to Section 14, exercise the same powers as conferred to courts in accordance with existing laws:

- a. To acquire information or record testimonies by making someone present before the Commission;
- b. To examine witnesses and record their statements;
- c. To pass orders for the submission of any document or paper;
- d. To avail any document or a copy thereof from any government or public office or court;
- e. To examine the evidences;
- f. To carry out or cause to be carried out on-the-spot-inspections or to pass orders for the submission of evidences.

(2) The Commission may, if it deems appropriate, prescribe a reasonable time period relating to make anyone present or submission of any document, paper or evidence pursuant to Sub-section (1).

(3) The Commission may, if it deems that any article or document relating to its investigation or inquiry is in possession of anyone or is in a specific location, carry out or cause to be carried out search of such person location without any information and take into or cause to be taken into possession of such article or document or cause to be taken the duplicate or copy of such document either fully or partially.

(4) Other matters relating to inquiry and investigation of complaints and/or information received by the Commission may be as prescribed.

17. To Render Support in Functioning of the Commission: (1) It shall be the duty of the concerned person, institution or agency to submit the documents, papers or evidences as demanded by the Commission and/or to submit information or statements by being present at the Commission pursuant to Section 16.

(2) If person, institution or agency having duty pursuant to Sub-section (1) fails to render support in the functioning of the Commission, the Commission may impose a fine of up to fifteen thousand rupees on each instance to such person, institution or the chief of such institution or agency.

(3) In case a person having duty pursuant to Sub-section (1) being an office-bearer or an employee of any government agency or public corporation, the Commission may forward in writing to the concerned agency to take departmental action or to take other necessary actions in accordance with existing laws against such office-bearer or employee on charge of failing to assume positional responsibilities.

(4) If any one causes hindrances in the functioning of the Commission, the Commission may impose a fine of up to fifteen thousand rupees on each instance to such person.

18. Protection of Witness or Other Persons: (1) If any person, being present before the Commission for statement or providing information requests the Commission of his/her security, and if, upon inquiry, it is deemed necessary to provide security to such person, the Commission shall make necessary arrangements for his/her security.

(2) The Commission may, upon necessity, take help of the Government of Nepal for the security of any person pursuant to Sub-section (1).

(3) No action shall be taken against any person only because of making statements or providing information to the Commission.

(4) If anyone being present to the Commission demands for reimbursement of the actual costs incurred for traveling to and from the Commission and for fooding during the course of

making statements or providing information to the Commission, the Commission may provide reasonable expenses to such person.

(5) If any one, who provides any information, notice or evidence to the Commission, wishes to keep his/her name confidential, the Commission shall keep his/her name confidential.

19. Public Hearing may be Made: (1) The Commission may, if it deems necessary to find truth and facts on matters relating to gross violation of human rights and crime against humanity, carry out public hearings.

(2) The methods and processes for carrying out public hearing shall be as determined by the Commission.

20. Activities of the Commission to be Open and Transparent: (1) The Commission shall carry out its activities in an open and transparent manner.

(2) Notwithstanding anything contained in Sub-section (1), such activities that are likely to have adverse impact on dignity or security of any person or to jeopardize law and order or to have adverse impact on the process of inquiry and investigation may be carried out in a secret manner.

(3) The Commission may, for the information of general public, may publicize, from time to time, details relating to its activities.

21. Independence and Impartiality to be Maintained: (1) The Commission shall perform its activities in an independent and impartial manner.

(2) The Commission must not function by being biased or having affection or malafide intention to anyone.

(3) The Commission shall, while carrying out its activities, abide by the universally accepted principles of law and justice.

(4) A Member shall not be involved in inquiry, investigation and other actions relating to such a person, who is either a relative of such Member or is directly related to any transactions with such Member.

22. Complaint may be De-listed: If any complaint or information is found baseless during the course of inquiry or investigation or if it cannot be implemented, the Commission may de-list such complaint by assigning reasons thereto.

23. Reconciliation may be Made: (1) The Commission may, by making the victim and the perpetrator present, cause to be made reconciliation mutually, if any individual is found guilty while carrying out inquiry and investigation in accordance with this Act.

(2) The Commission may, in relation to making reconciliation pursuant to Sub-section (1), ask the perpetrator to make an apology with the victim by regretting for his/her past misdeeds.

(3) The Commission shall, in relation to making reconciliation pursuant to Sub-section (1), make reasonable reparations available to the victim from the perpetrator after having consultations with him/her in lieu of the loss and damage caused to the victim.

(4) The Commission shall, in relation to making reconciliation pursuant to Sub-section (1), carry out or cause to be carried out the following activities in order to persuade both the victim and the perpetrator for reconciliation:

- a. To organize various types of workshops, seminars, assemblies and conferences relating to reconciliation;
- b. To organize rallies relating to reconciliation at the national as well as local level;
- c. To conduct interaction programs through various means of communication relating to reconciliation;
- d. To organize reconciliation ceremonies at the conflict-hit areas with the involvement of perpetrator and victim and his/her family-members;
- e. To make arrangements of erection of statutes or memorials in memory of those who were killed during the armed conflict with the involvement of the perpetrator and victim and his/her family-members;
- f. To make publication of various articles, essays, songs, arts, etc. relating to reconciliation;
- g. To carry out other appropriate tasks.

(5) In case of victim being killed or being a minor or a mentally impaired person, the Commission may make reconciliation in accordance with this Section with family-members of the victim and the perpetrator.

24. To Recommend for Action: (1) The Commission shall make recommendations to the Government of Nepal for necessary action against such person who is found guilty while carrying out inquiry and investigation in accordance with this Act.

(2) Notwithstanding anything contained in Sub-section (1), no recommendation shall be made to the Government of Nepal for action on such matters upon which reconciliation between the victim or his/her family members and the perpetrator has been made pursuant to Section 23.

25. Recommendation may be made for Amnesty: (1) Notwithstanding anything contained in Section 24, if any person is found to have committed gross violation of human rights or crime against humanity in course of abiding by his/her duties or with the objective of fulfilling political motives, the Commission may make recommendation for amnesty to such person to the Government of Nepal.

(2) Notwithstanding anything contained in Sub-section (1), no recommendation for amnesty shall be made to a person involved in following acts:

- a. Any kind of murder committed after taking under control or carried out in an inhumane manner;
- b. Inhumane and cruel torture;
- c. Rape.

(3) The Commission shall decide whether any act as referred to in Clause (b) of Sub-section (2) is an inhumane or cruel torture.

(4) Prior to making recommendation by the Commission pursuant to Sub-section (1), such person shall be required to submit an application in writing for amnesty to the Commission by regretting for the misdeeds carried out by oneself during the armed conflict within a time period as prescribed by the Commission.

(5) The bases and criteria to be adopted while making recommendation pursuant to Sub-section (1) shall be as prescribed.

(6) The name of such person, who is granted amnesty by the Government of Nepal upon the recommendation of the Commission pursuant to Sub-section (1), shall be published in the Nepal Gazette.

(7) In case a person recommended for amnesty pursuant to Sub-section (1) is denied for amnesty by the Government of Nepal, the Ministry shall act pursuant to Clause (a) of Sub-section (2) of Section 28 relating to such person.

26. Recommendations for Reparations may be Made: (1) The Commission shall, if it is found necessary to provide reparations to the victim through inquiry and investigation carried out in accordance with this Act, make recommendations to the Government of Nepal therefore.

(2) Notwithstanding anything contained in Sub-section (1), the Commission may, if it deems appropriate, make recommendations to the Government of Nepal to provide concessions as follows, in the form of reparations to the victim or if the condition so desires, any member of his/her family as follows:

- a. Free education and health-care facilities;
- b. Skill-oriented training;
- c. Loan facilities without or with concessional interests;

- d. Arrangements of habitation;
- e. Employment facilities;
- f. Other concessions as deemed appropriate by the Commission.

(3) The bases and criteria to be adopted while determining reparations pursuant to Sub-section (1) shall be as prescribed.

(4) The reparations to be received by the victim pursuant to Sub-section (1) shall be received by his/her nearest family-member in case of the death of the victim.

27. Report to be Submitted: (1) The Commission shall submit its Report, by mentioning details on following matters, to the Government of Nepal upon the completion of its tasks:

- a. Details relating to the complaints inquired and investigated and de-listed by the Commission;
- b. Details relating to actual truth and fact found as a result of inquiry and investigation;
- c. Details relating to reconciliation made between victim and perpetrator pursuant to Section 23;
- d. Matters relating to recommendations to the Government of Nepal for necessary action pursuant to Sections 24, 25 and 26.
- e. Matter relating to formulation of a new law for the implementation of the Report, if any;
- f. Measures to be adopted forthwith and in the long run by the Government of Nepal in order to create an environment for reconciliation in the society;
- g. Inherent social, economic, cultural, political and other causes of the armed conflict and measures to be adopted by the State for non-repetition of such incidents.
- h. Other matters deemed appropriate by the Commission.

(2) The Commission shall make the acts of recommendation pursuant to Sections 24, 25 or 26 through the Report as referred to in Sub-section (1).

(3) The Government of Nepal shall present the Report received pursuant to Sub-section (1) to the Legislature-Parliament or the Constituent Assembly.

Chapter-5

Implementation and Monitoring of the Report

28. Responsibility to Implement the Report: (1) The responsibility to implement or cause to be implemented the recommendations made in the Report submitted by the Commission pursuant to Section 27 shall lie with the Ministry.

(2) In order to implement the recommendations made in the Report of the Commission, the Ministry shall carry out the acts as follows:

- a) To forward in writing to the Office of the Attorney General with the approval of the Council of Ministers of the Government of Nepal for needful actions in order to implement the recommendations as mentioned in Section 24;
- b) To forward in writing to the Council of Ministers of the Government of Nepal in order to implement the recommendations as mentioned in Section 25;
- c) To do or cause to be done the needful actions by the Commission itself or through other concerned agencies with the approval of the Council of Ministers of the Government of Nepal in order to implement the recommendations as mentioned in Section 26;
- d) To do the needful action for the formation of necessary laws; if it is felt necessary for the implementation of recommendations made in the Report;
- e) To carry out or cause to be carried out other acts that are deemed appropriate for the implementation of the Report of the Commission.

(3) The Ministry shall implement the recommendations as mentioned in Clauses (f) and (g) of Sub-section (1) of Section 27 in an orderly manner by assigning priority to them.

29. Reconciliation and Peace Building Fund: (1) There shall be a separate fund named Reconciliation and Peace Building Fund under the Ministry.

(2) The Fund shall consist of following amounts:

- a. Amount received from the Government of Nepal;
- b. Amount received in the form of grant from foreign governments, native or international associations, institutions or agencies;
- c. Amount received from any other source.

(3) The amount to be received by the Fund shall be deposited in any commercial bank in Nepal by opening a separate account.

(4) The operation of the Fund shall be as determined by the Ministry.

(5) The Ministry shall keep the descriptions of income and expenditure of the Fund in a format as determined by existing laws.

(6) The examination of accounts of the Fund shall be done by the Auditor General.

30. Use of Amount of the Fund: (1) The amount deposited in the Fund shall be used for the implementation of recommendations as mentioned in the Report submitted by the Commission.

(2) The Ministry may frame and enact necessary guidelines relating to the use of the amount deposited in the Fund.

31. Monitoring of the Report submitted by the Commission: (1) The task of monitoring whether or not the recommendations made in the Report of the Commission shall be done by the National Human Rights Commission.

(2) The National Human Rights Commission may, if it is found while carrying out monitoring pursuant to Sub-section (1), that the Ministry has failed to implement the recommendations made in the Report of the Commission, draw the attention of the Ministry to implement such recommendations.

Chapter-6 Miscellaneous

32. Sub-committees or Task Forces may be Formed: (1) The Commission may, in order to function its activities smoothly, form various sub-committees or task forces by incorporating experts of concerned field, if necessary.

(2) The functions, duties and rights; term of office; the benefits to be received by the members of such sub-committees or task forces and other arrangements of sub-committees or task forces formed pursuant to Sub-section (1) shall be as determined by the Commission.

33. Service of Experts may be Procured: (1) The Commission may, for the accomplishment of tasks in accordance with this Act, procure services of native or foreign experts or specialized agencies of concerned field, if necessary.

(2) The appointment; functions, duties and rights; conditions of services and benefits of the experts or specialized agencies as referred to in Sub-section (1) shall be as determined by the Commission.

(3) Notwithstanding anything contained in existing laws, the concerned agency or association shall provide services as demanded by the Commission, if the Commission deems necessary to acquire service of such agency or association.

34. No Hindrance may be Occurred: There shall be no hindrance to carry out its activities by the Commission merely on the ground of any post of the Member being vacant.

35. Delegation of Power: The Commission may, as per necessity, delegate some of its powers conferred to it by this Act, to the Chairperson, Member, Secretary or sub- committee or task force formed pursuant to Section 32.

36. Term of Office: (1) The term of office of the Commission shall be of two years effective from the date of its formation.

(2) Notwithstanding anything contained in Sub-section (1), if the Commission demands for an extension of its term of office by explaining reason for the non-completion of its tasks within the term of office as mentioned in such Sub-section, the Government of Nepal may extend the term of office of the Commission for up to a period of one year.

37. Commission may be Dissolved: (1) The Government of Nepal may dissolve the Commission in cases if the Commission accomplishes its tasks in accordance with this Act or its term of office is over or the Commission is unable to accomplish its tasks for any reason.

(2) All the assets, documents and liabilities of the Commission shall be transferred to the Ministry if the Commission is dissolved pursuant to Sub-section (1).

(3) The employees working with the Commission shall be returned back to their previous offices and the employees appointed on a contract basis shall *ipso facto* be relieved from their respective posts, if the Commission is dissolved pursuant to Sub-section (1).

38. Oath of Office: The Chairperson and Members shall take the oath of office in a format as prescribed in the Annex with the Chief Justice and the Chairperson respectively prior to the assumption of their duties.

39. Liaison with the Government of Nepal: The Commission shall liaise with the Government of Nepal through the Ministry.

40. Power to Frame Rules: The Commission may frame necessary Rules for carrying out the objectives of this Act.

Annex Relating to Section 38

Oath of Office

I,, hereby swear in the name of the God/ solemnly affirm that I will bear full loyalty to the Nepali people and existing constitution and other laws and that I will faithfully discharge the duties and responsibilities as a Chairperson/ Member of the Commission without fear or favor, affection or ill-will of or unto none and that I will not disclose any matter, in any condition whether or not being in any position, being known in course of discharging duties except in cases of abiding by the existing laws.

Date:

Signature: