

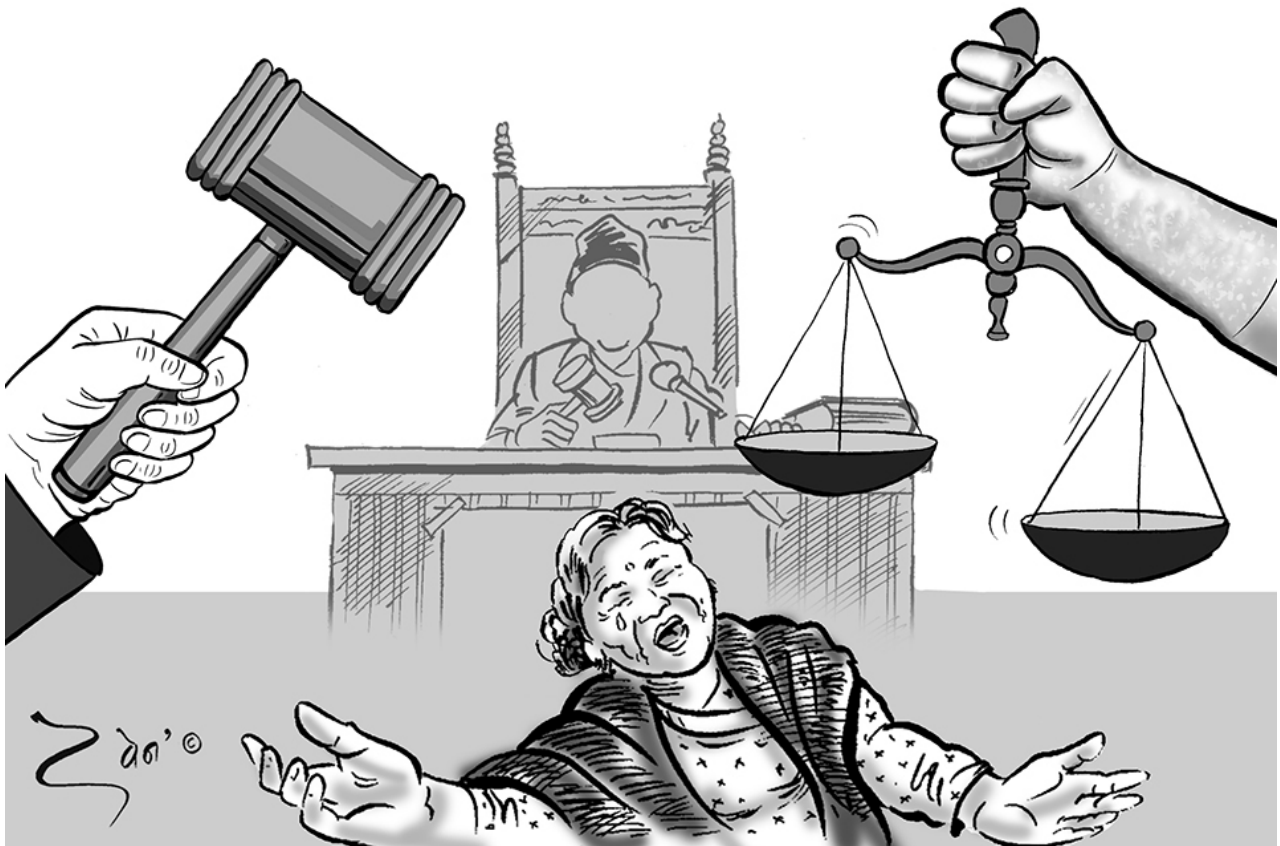
# Unresolved Issues: Scrutinizing Nepal's New Transitional Justice Bill

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Opinion

Published On: June 7, 2023 09:30 AM NPT By: Harsh Mahaseth & Dikshya Adhikari



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### Unresolved Issues: Scrutinizing Nepal's New Transitional Justice Bill

On March 9, 2023 "The Bill for the Amendment of the Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act (2014)" was registered in the Parliament. Some provisions of the proposed might serve as the foundation for long overdue and sorely needed development such as assurance of the right to restitution and short-term assistance to the victims, promotion of investigating the causes and effects of the conflict, and making recommendations for institutional improvements. However, the majority of the issues raised by the victims' groups, parliamentarians, and human rights experts in the previous draft of the bill in July 2022 remain unaddressed.

When the Comprehensive Peace Agreement was signed on November 21, 2006, it was said that a transitional justice system would be created within six months and the victims would be brought to justice immediately. However, little to no progress has been made, leaving the status of the transitional judicial bodies in disarray. Now, there is a new Bill that has been registered and there is a need for progress.

The governing parties, driven by a sense of urgency, are reluctant to subject the new law to the scrutiny of a House committee or engage in lengthy debates. Their primary objective is to ensure swift adoption of the measure by the entire House. In contrast, opposition parties insist on thorough deliberations and consultations with all stakeholders before granting approval. Their opposition to a fast-track approach stems from their belief that certain clauses within the Bill require significant modifications. They staunchly assert that compromising on the principles of justice for victims and human rights is simply unacceptable. As a result, a contentious standoff persists, with each side advocating for its preferred course of action.

The newly proposed Bill raises significant concerns as it fails to align with both domestic and international laws. The Bill must be revised to ensure its compliance with Nepal's Supreme Court judgement as well as international human rights laws while ensuring sufficient consultation with conflict victims. The provisions hinder accountability, limit the right to appeal, and fail to establish effective investigative measures. Community service as an alternative punishment raises doubts about the severity of penalties. Ambiguities in the non-retroactivity of criminal law and statutory limitations for rape further undermine the Bill's efficacy in addressing historical injustices. Urgent revisions are necessary for a more comprehensive and just transitional justice framework.

The current Bill demonstrates some progress in addressing long-overdue and crucial issues. It ensures the right to reparation and interim relief for previously overlooked victims and grants the families of "disappeared" individuals the right to their relative's property. Additionally, the Bill tasks Nepal's Truth and Reconciliation Commission with

studying the root causes and impact of the conflict, as well as recommending institutional reforms. However, despite these positive aspects, the Bill fails to address the majority of concerns raised by the victims' groups, parliamentarians, and human rights experts regarding the previous draft in July 2022.

Under the Bill, violations committed during armed conflict are classified into two categories. The first category includes murder, sexual violence, physical or mental torture, kidnapping and hostage-taking, unlawful imprisonment, beatings, mutilation or maiming, robbery, seizure, vandalism, arson, forcible eviction or displacement, and any inhuman acts contrary to international human rights or humanitarian law, all classified as "human rights violations."

The Bill categorized certain violations as "gross violations of human rights," including cruel torture, brutal killing, rape, and forced disappearance. These crimes were deemed eligible for reconciliation and forgiveness, except for cases falling under the category of "gross violation of human rights." However, the controversy stems from the unfair classification of violations. Any killing, regardless of its connection to humanitarian and human rights laws, should be recognized as a serious violation. The Bill only denies pardon if there is evidence of "brutal torture or brutal killing," allowing amnesty and reconciliation for those involved in other killings, including unarmed individuals or those killed in custody in violation of war rules.

### **Conflict Victims' Response To The Bill**

As the currently-formulated Bill gives rise to several serious human rights concerns. Even conflict survivors and human rights activists have expressed grave concerns about the provisions of the Bill. According to them, the third amendment to the Truth and Reconciliation Commission and the Commission for Investigation of Enforced Disappeared Persons Act, 2014, is purportedly intended to protect those who commit terrible crimes like murder. They have stressed that if the proposed legislation is passed as it is now drafted, it is unlikely to be supported by the victims, Nepal's Supreme Court, and domestic or international civil society and human rights organizations, due to the serious flaws in it.

In a joint statement released on March 15th, 42 organizations representing conflict victims condemned the measure as a betrayal of their quest for justice and a violation of their rights. They expressed concern over the distinction between "human rights violation" and "serious human rights violation," warning that it could foster impunity and fuel further violence within the country. Moreover, they argued that pardoning war crimes and crimes against humanity, which encompass acts such as murder, sexual assault, torture, kidnapping, and mutilation, contradicts national and international laws, as well as the precedents and guiding principles set by Nepal's Supreme Court.

Given the national and international significance of transitional justice, these organizations have called for the Bill to be thoroughly deliberated within the parliamentary committee system, ensuring comprehensive engagement with stakeholders, including the

victims. They emphasized that despite significant time and effort dedicated to achieving transitional justice, victims have yet to receive the justice they deserve, and the recently-introduced Bill falls short of addressing their concerns. If the legitimacy of this process is questioned by victims, human rights advocates, the international community, and former combatants, it risks being halted once again. Criticism has also been directed towards political parties, with accusations that they remain silent when in power and only speak out when they are not.

The call for a more inclusive and robust engagement process, along with the need to address the concerns of victims and uphold human rights, highlights the significance and complexity of the transitional justice endeavor in Nepal.

### **What Should Be The Next Step?**

The Bill, if it is passed as formulated without amendment, will make it possible for many people who are allegedly involved in abuses that qualify as crimes under international law to avoid punishment. It would imply that the legal system would let down many victims and survivors in Nepal, some of whom have waited two decades for the truth and redress. There have practically been no successful trials for serious crimes under international law since the conflict concluded in 2006. In particular, the Supreme Court invalidated several sections of the 2014 law creating Nepal's Truth and Reconciliation Commission (TRC), and the Commission of Investigation on Enforced Disappeared Persons (CIEDP), because they had the authority to pardon those who committed serious crimes in accordance with international law.

The UN and Nepal's diplomatic allies should insist on justice for serious crimes under international law so that victims have the chance to see perpetrators held accountable. International support and recognition can only be given to processes that adhere to international legal requirements.

Impunity has grown as a result of the prolonged absence of justice for crimes committed during the conflict in Nepal. More than 140 victims—including the families of those who were the targets of extrajudicial killings and enforced disappearances—have sought justice through the regular court system but since successive governments have argued that all cases involving armed conflicts should be handled in accordance with the transitional justice law the progress has been stalled.

Until a trustworthy judicial system for crimes committed during a conflict is formed, Nepal's current justice system should ensure victims' access to effective remedies and compensation. While local legal channels for justice are still being blocked, prosecutors in other countries should investigate and attempt to prosecute international crimes committed in Nepal in accordance with the principle of universal jurisdiction.

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Truth and Reconciliation Commission Act newly proposed Bill  
international human rights laws

