

TRACING THE TRAJECTORY OF THE RECOMMENDATION COMMITTEE

After the Third Amendment to the
TRC Act

June 2025



Advocacy Forum - Nepal

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ADVOCACY FORUM-NEPAL
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Justice delayed is justice denied. Justice manipulated is injustice institutionalized.

BACKGROUND

Amid ongoing controversies, the Government of Nepal appointed commissioners to the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) through a cabinet decision on 14 May 2025. The controversy stems from the composition of the Recommendation Committee, the flawed process it adopted in shortlisting candidates, and a glaring lack of transparency and objectivity in its functioning.

Following the much-anticipated third amendment to the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014 (TRC Act) in August 2024, the Recommendation Committee was established in October 2024 as per legal requirements.¹ However, it failed to recommend any candidates, citing an inability to reach consensus. When the committee was reconstituted for a second time on 24 March 2025, it again failed to correct past mistakes or adopt an inclusive, transparent, and merit-based approach that would allow credible individuals with expertise, public trust, and integrity to be appointed.

Instead, the process appeared to be driven by political interests, specifically a deal among the three major parties to divide the commissions' seats among themselves to accommodate loyal party cadres. This political power-sharing model has undermined the credibility and mandate of both commissions, placing them under *de facto* control of the main political parties, many of which have shown little genuine interest in pursuing transitional justice (TJ). As a result, victims' groups across the country have publicly denounced the appointments and threatened to withdraw their support and cooperation with the current commissions.²

¹ Commission on the Investigation of the Enforced Disappeared Persons, Truth and Reconciliation Commission Act, TRC Act 2014 (third amendment), s.3(3).

² On 1 May victims issued a press release listing 11 points of critique against the ongoing process [Anil Giri, 'Victims Reject Transitional Justice Shortlist, Demand New Selection Panel' (*The Kathmandu Post*, Kathmandu, 2 May 2025) <https://kathmandupost.com/national/2025/05/02/victims-reject-transitional-justice-shortlist-demand-new-selection-panel> accessed on 11 July 2025]. On 6 May 2025, 10 organizations working on TJ appealed to immediately address the serious concerns of the conflict victims regarding

This paper seeks to unpack the flawed selection process and explain the underlying reasons behind the victims' growing agitation after their nearly two-decade-long struggle for truth, justice, and reparation. It also tries to analyze the process the Recommendation Committee adopted in light of international best practices and to what extent the committee adhered to them.

CONTEXT

In 2014, Nepal's Parliament passed the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act in a context of mounting pressure following the arrest of a serving Nepali Army colonel in the United Kingdom under the principle of universal jurisdiction.³ He was accused of torturing detainees during the armed conflict in 2004. Prior to this, successive governments had attempted to provide blanket amnesty to alleged perpetrators, either through legislation or executive decisions, including for serious human rights violations.⁴

The 2014 Act was rushed through Parliament using a fast-track procedure, bypassing debate, and excluding meaningful input from victims and civil

the selection process for the TJ commissions [6 May 2025, 'Immediately Address Serious Concerns of Conflict Victims Regarding the Selection Process of Officials for the Transitional Justice Commissions'- Advocacy Forum (AF), Amnesty International, Accountability Watch Committee, Informal Sector Service Center (INSEC), JuRI-Nepal, Legal Aid and Consultancy Centre Nepal (LACC). On 14 May 2025, victims also submitted an open letter to the Prime Minister requesting a credible and transparent process for appointing officials to the two TJ commissions [Anil Giri, 'Conflict Victims Urge Prime Minister for Transparency in Appointments to Transitional Justice Bodies' (*The Kathmandu Post*, Kathmandu, 4 May 2025) <https://kathmandupost.com/national/2025/05/04/conflict-victims-urge-prime-minister-for-transparency-in-appointments-to-transitional-justice-bodies> accessed 11 July 2025.] and [Advocacy Forum Nepal, 'Posts' (*LinkedIn*, Kathmandu, n.d.) <https://www.linkedin.com/company/advocacy-forum-nepal/posts/?feedView=all> accessed on 11 July 2025]. On 16 May, victim organizations CVCP, CVWN, NEFAD held a joint press conference expressing their objections [<https://www.ratopati.com/story/490261/conflict-victims-object-to-appointment-of-officials-to-commissions>], and on 23 May the Gender and TJ Network condemned the inception of three month deadline for receiving the application of CRSV survivors [Advocacy Forum Nepal, '[Facebook Post]' (*Facebook*, Kathmandu, n.d.) <https://www.facebook.com/share/p/1DBFdDu8bh/> accessed on 11 July 2025].

³ Ingrid Massagé and Mandira Sharma, 'Regina v Lama: Lessons Learned in Preparing a Universal Jurisdiction Case' (2018) 10(2) *Journal of Human Rights Practice* 332 <https://doi.org/10.1093/jhuman/huy014> accessed 11 July 2025.

⁴ AF, 'Preliminary Analysis of the TJ Bill, 2079', March 2023, <https://www.advocacyforum.org/downloads/pdf/press-statement/2023/preliminary-analysis-of-the-tj-bill-2079-advocacy-forum-nepal.pdf>, accessed 11 July 2025.

society.⁵ The law included several provisions that directly contradicted Nepal's international legal obligations and constitutional guarantees.⁶ More than 200 victims from across the country challenged its legality in the Supreme Court.⁷ The United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) also declined to support the commissions, stating that their legal mandate undermined international human rights standards.⁸

In 2015, the Supreme Court of Nepal ruled that multiple provisions in the Act were unconstitutional and ordered the government to amend the law accordingly.⁹ Despite this, the government proceeded to appoint commissioners to the TRC and CIEDP twice without making the necessary amendments. These commissions remained largely dysfunctional for nearly a decade and failed to deliver any meaningful progress.¹⁰

Following years of advocacy and negotiation by victims, civil society organizations, and human rights defenders, the government finally amended the TRC Act in August 2024. Although the amendment included some improvements, particularly in response to the Supreme Court's verdict and demands of victims and civil society organizations (CSOs), it still retained problematic provisions that could undermine international legal standards.¹¹ As victims have been desperate to get truth, justice and reparation, many

⁵ Mandira Sharma, 'The Complexities of Delivering Justice and Truth Simultaneously in Transitional Justice Processes with a Special Focus on Nepal' (PhD thesis, University of Essex 2021)18.

⁶ OHCHR, *Technical Note: The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) – as Gazetted 21 May 2014* (2014).

⁷ *Suman Adhikari et al. v Office of the Prime Minister and Council of Ministers and Others* (2015) Issue 12 Decision No 9303 NKP 2071 [2015] 2069, para. 76.

⁸ OHCHR, 'Technical Note The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) – as Gazetted 21 May 2014', [<https://studylib.net/doc/17675392/ohchr-technical-note-commission-on-investigation-of-disap...>], p. 1.

⁹ *Madhav Kumar Basnet v. Office of the Prime Minister and Council of Ministers and Others* (2070) 55:9 NKP 1101; *Suman Adhikari and Others*, Writ no 070-WS-0050 (Judgment delivered on 14 Falgun 2071 B.S.-26 February 2015 A.D), p. 76; and *Kamalesh Diwedi v. Office of the Prime Minister and Council of Ministers and Others* (2064) 49:7 NKP 827.

¹⁰ AF, 'The state of Transitional Justice in Nepal', Briefing Paper, February 2019, p.12.

¹¹ ICJ, HRW, AI, 'Nepal: Ensure Credible Transitional Justice Appointments: Political Interference in Selections is Jeopardizing the Process', 12 May 2025, <https://www.hrw.org/news/2025/05/12/nepal-ensure-credible-transitional-justice-appointments>; Amnesty International and others, 'Nepal: New Transitional Justice Law a Flawed Step Forward', 20 August 2024, <https://www.amnesty.org/en/latest/press-release/2024/08/Nepal-new-transitional-justice-law-a-flawed-step-forward/> accessed 11 July 2025.

victims' groups and human rights organizations decided to support the implementation of the law in good faith, on the condition that those appointed to the commissions would be qualified, independent, and credible. They hoped that capable leadership could navigate legal grey areas and operationalize the commissions in a way that upheld human rights and restored victims' trust.¹²

¹² International Commission of Jurists, 'A Brief Review of Nepal's Transitional Justice (TJ) Law', November 2024, <https://www.icj.org/wp-content/uploads/2025/03/A-Brief-Review-of-Nepals-Transitional-Justice-TJ-Law.pdf>, p 1.

WHY THE CONTROVERSY AGAIN?

LEGITIMACY OF THE RECOMMENDATION COMMITTEE

Multiple meetings,¹³ press statements,¹⁴ and memoranda¹⁵ issued by victims

¹³ 17 April 2025-Discussion meeting on the current TJ Context, Reaffirmation of Collective Position and Way forward; 28 April 2025-Discussion meeting on Transitional Justice Process in Nepal: from Ongoing Progress and Candidate Shortlist Lens; 29 April 2025-Discussion Meeting on the Implications of the Shortlisted Candidates by the Recommendation Committee on the Rights of Conflict Victims of Nepal; 30 April 2025-Discussion meeting of Victims on the ongoing situation of the Transitional Justice Process in Nepal and way forward; 1 May 2025- Reflection meeting on the Press Release held on 1 May 2025 by victims; 4 May 2025-Discussion Meeting on Victims' Position Regarding the Formation of Two Committees; 9 May 2025-National Level Victims' Gathering on Recent Development in TJ; 12 May 2025-Reflection Meeting after Sit-in Protest at Kathmandu by Victims; 15 May 2025-Discussion Meeting after the Recommendation Committee and Council of Ministers appointed Chairpersons and members in the two Commissions; 20 May 2025-Discussion Meeting between the Victims and CSOs to Discuss the Recent Development in TJ after The Appointment of Office Bearers in the Two Commissions; 23 May 2025-Discussion Meeting on the Recent Development in the Transitional Justice Process of Nepal and Collective Strategy Development by Experts and Human Rights Defenders; 28 May 2025-Discussion Meeting between Victims and CSOs to Enhance Provincial Level Engagement for a Fair and Credible TJ Process in Nepal [The minutes of these series of meetings are available in the AF archives].

¹⁴ On 1 May 2025-victims issued a press release highlighting 11 points of dissatisfaction in respect of the ongoing process [Anil Giri, 'Victims Reject Transitional Justice Shortlist, Demand New Selection Panel' (2025) *The Kathmandu Post*, 2 May <https://kathmandupost.com/national/2025/05/02/victims-reject-transitional-justice-shortlist-demand-new-selection-panel> accessed 11 July 2025.]; 14 May 2025-39 victim-led organizations submitted an open letter to the Prime Minister requesting a credible and transparent process for appointing officials to the two transitional justice commissions [Anil Giri, 'Conflict Victims Urge Prime Minister for Transparency in Appointments to Transitional Justice Bodies' (2025) *The Kathmandu Post*, 4 May <https://kathmandupost.com/national/2025/05/04/conflict-victims-urge-prime-minister-for-transparency-in-appointments-to-transitional-justice-bodies> accessed 11 July 2025.] and [Advocacy Forum Nepal, 'Posts' (n.d.) *LinkedIn* <https://www.linkedin.com/company/advocacy-forum-nepal/posts/?feedView=all> accessed 11 July 2025.], and on 23 May gender and TJ network condemned the inception of a three month timeline for submitting complaints by CRSV survivors [Advocacy Forum Nepal, 'Facebook Post' *Facebook* <https://www.facebook.com/share/p/1DBFdDu8bh/> accessed 11 July 2025].

¹⁵ On 6 May 2025, 10 organizations working in TJ also issued a statement to immediately address serious concerns of conflict victims regarding the selection process in the TJ commissions [6 May 2025, 'Immediately Address Serious Concerns of Conflict Victims Regarding the Selection Process of Officials for the Transitional Justice Commissions'- AF, Amnesty, AWC, INSEC, JuRI, LACC, HRJC, VOW, COCAP, and HURON.]; on 12 May 2025- AI, HRW, and the ICJ issued a statement to urgently heed into the demands of conflict victims and amend the process for appointing commissioners to the country's two transitional justice bodies, [Human Rights Watch, 'Nepal: Ensure Credible Transitional Justice Appointments' (2025) *Human Rights Watch*, 12 May <https://www.hrw.org/news/2025/05/12/nepal-ensure-credible-transitional-justice-appointments> accessed 11 July 2025]; on 16 May 2025- Victim Community issued a 7 point memorandum clarifying that they do not recognize the selected members in the commission, [Ratopati, 'Conflict Victims Object to Appointment of Officials to Commissions' (2025) *Ratopati*, <https://www.ratopati.com/story/490261/conflict-victims-object-to-appointment-of-officials-to-commissions> accessed 11 July 2025]; 18 May 2025-7 conflict victims submitted 11-point right

and civil society organizations including the meetings of victim groups with the Prime Minister K.P Oli, the leader of Nepali Congress Party Sher Bahadur Deuba and the Leader of the Nepal Communist Party (Maoist-Centre), Pushpa Kamal Dahal 'Prachanda'¹⁶ have identified several fundamental issues with the latest process. Chiefly among them are the legitimacy of the Recommendation Committee itself, a general lack of transparency and objectivity in its operations and more specifically, a lack of victims' participation and consultation.

The TRC Act amended in 2024, envisions the formation of a Recommendation Committee composed of five members. According to the Act, this committee is to be chaired by a former Chief Justice of Nepal, nominated by the Government. It also includes the Chairperson of the National Human Rights Commission (NHRC) or their designated representative in addition to three members appointed by the Government from among individuals with expertise in relevant fields such as human rights, conflict, sociology, law, or psychology. The Act further requires that at least one member of the committee be a woman.¹⁷

Soon after the amendment of the law, the Government constituted the Recommendation Committee on 18 October 2024. It included former Chief Justice Om Prakash Mishra (Chair), former Ambassador Arjun Karki, human rights activist Stella Tamang, former Attorney General Khamma Bahadur Khati and the NHRC representative Manoj Dawadi as members. However, the Committee failed to deliver on its mandate to recommend any names and formally dissolved itself, recommending that the government constitute a new Recommendation Committee.¹⁸

to information petition to the Ministry of Law, Justice and Parliamentary Affairs Committee questioning the evaluation criteria, basis for recommendations, background assessments, scoring system, and the exclusion of victim consultation in the latest TJ process of Nepal, [Janachaso, 'Pidit Bahira, Prashna Vitra: Suchanako Hak Maraft Magiyo Jawaf- *Victims Outside, Questions Inside: Answered sought through Right to Information*'(2025), Janachaso, 18 May 2025, <https://janachaso.com/outside-the-victim-inside-the-question/>, accessed 11 July 2025].

¹⁶Conflict victims urge prime minister for transparency in appointments to transitional justice bodies, May 4, 2025. Anil Giri, 'Conflict Victims Urge Prime Minister for Transparency in Appointments to Transitional Justice Bodies' (2025) The Kathmandu Post, 4 May, <https://kathmandupost.com/national/2025/05/04/conflict-victims-urge-prime-minister-for-transparency-in-appointments-to-transitional-justice-bodies>, accessed 11 July 2025.

¹⁷ TRC Act, s.3(3)(c).

¹⁸ Khamma Bahadur Khati-Spokesperson of the Recommendation Committee October 2024-December 2024, 'Press Release issued by the Recommendation Committee to appoint office bearers in the Truth and Reconciliation Commission and the Commission on the Inquiry of the Enforced Disappeared Persons',

Soon after, NHRC member Manoj Dawadi publicly stated that the lack of neutrality within the committee was the primary reason for its failure.¹⁹ It was widely believed that the Committee members were under the shadow of political parties under whose patronage they were appointed as the members tried to recommend candidates put forward by the party which had put them forward as members of the committee. This resulted in the committee not reaching a consensus.

Despite these admissions from the committee members and wider concerns raised by victims and CSOs about the independence of the Committee,²⁰ the leaders of Nepal's three major political parties convened and announced their decision to continue with the same members, with the sole exception of replacing Dawadi with Lily Thapa, a figure widely viewed as being politically aligned with the ruling CPN-UML party. This reappointment appeared to be a cosmetic change meant to fulfill procedural requirements, rather than a genuine attempt to address the underlying problems and select genuine people in the Commission.

Insiders and observers, including former minister and peace negotiator Vidhyadhar Malik, publicly questioned the rationale of reappointing the same individuals who had already failed once.²¹ It was widely rumored that committee

17 December 2024, [Post Report, 'Recommendation Committee Can't Award Merit in Picking Transitional Justice Office Bearers, NHRC Says' (2024) *The Kathmandu Post*, 25 December <https://kathmandupost.com/national/2024/12/25/recommendation-committee-can-t-award-merit-in-picking-transitionaljusticeofficebearersnhrcsays> accessed 11 July 2025]; {copy of the press release available at the AF archive-TJ and Research Department}

¹⁹ The Kathmandu Post, 'Recommendation Committee Can't Award Merit in Picking Transitional Justice Office Bearers, NHRC Says', 25 December 2024, [Post Report, 'Recommendation Committee Can't Award Merit in Picking Transitional Justice Office Bearers, NHRC Says' (2024) *The Kathmandu Post*, 25 December <https://kathmandupost.com/national/2024/12/25/recommendation-committee-can-t-award-merit-in-picking-transitionaljusticeofficebearersnhrcsays> accessed 11 July 2025].

²⁰ "Only two in the five-member [recommendation] panel are neutral. Three others act as dictated by their parties," Manoj Duwadi during an interaction held by the NHRC on 24 December 2024, Tuesday. See: Post Report, 'Recommendation Committee Can't Award Merit in Picking Transitional Justice Office Bearers, NHRC Says' (2024) *The Kathmandu Post*, 25 December <https://kathmandupost.com/national/2024/12/25/recommendation-committee-can-t-award-merit-in-picking-transitionaljusticeofficebearersnhrcsays> accessed 11 July 2025.

²¹ Kathmandu Post, 'Qualification for Chairs of TJ Commissions Need to Be Revised', 30 December 2024, Binod Ghimire, 'Qualification for Chairs of TJ Commissions Need to Be Revised' (2024) *The Kathmandu Post*, 30 December <https://kathmandupost.com/interviews/2024/12/30/qualification-for-chairs-of-tj-commissions-need-to-be-revised> accessed 11 July 2025.

members accepted reappointment on the exchange of future positions.²² Such backroom deals and partisan alignments have severely compromised the legitimacy of the Recommendation Committee, and by extension, the TJ bodies themselves. Victims are not only disillusioned but feel insulted by a process that continues to ignore their voices and sacrifices.²³ In addition to the legitimacy of the Committee, its conduct played a role in forcing victims' groups to denounce the Committee members and the Commissioners.

Below we set out in more detail the grounds on which the victims have come to a decision to boycott the commissions in light of international standards and best practices and the extent to which the Recommendation Committee adhered to them.

GROUNDINGS FOR BOYCOTT WITH REFERENCE TO INTERNATIONAL STANDARDS AND BEST PRACTICES

NO OBJECTIVE CRITERIA

The principal mandate of the Recommendation Committee is to identify and recommend suitable candidates for appointment as chairpersons and members of the two TJ bodies: the TRC and the CIEDP. However, the law itself does not provide detailed benchmarks or mechanisms for assessing the suitability of potential commissioners, nor does it ensure that the process is insulated from political interference. Thus, it was the responsibility of the Committee to develop a working procedure to ensure competent and qualified people with integrity would be selected for the Commissions.

There are standards and best practices to adopt when selecting TJ Commissions, which the Committee has completely ignored. For example, the UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action

²² Remarks by several victims in a confidential meeting of victims and CSOs organised in Kathmandu.

²³ "This is getting unbearable. I want to warn the government and the political parties that victims are running out of patience. How long do they want us to wait for a credible process to start?" Suman Adhikari, Conflict Victim, as quoted in Kathmandu Post, 'Victims reject transitional justice shortlist, demand new selection panel', 2 May 2025, [Anil Giri, 'Victims Reject Transitional Justice Shortlist, Demand New Selection Panel' (2025) *The Kathmandu Post*, 2 May <https://kathmandupost.com/national/2025/05/02/victims-reject-transitional-justice-shortlist-demand-new-selection-panel?s=09> accessed 11 July 2025].

to Combat Impunity (2005) stresses that truth commissions must consist of *independent, impartial, and competent* individuals²⁴ and appointments must be made following *transparent procedures based on objective criteria*.²⁵ It also requires victims' participation in the process and its monitoring.²⁶

Similarly, the UN Secretary-General's 'Guidance Note on United Nations Assistance to Transitional Justice' (2010) calls for transparent, inclusive, and consultative selection processes,²⁷ recommends establishing minimum eligibility criteria such as demonstrated expertise in human rights, law, conflict resolution, or psychosocial work, and moral authority. It particularly stresses that selection bodies must avoid partisan or political considerations and uphold gender, ethnic, and regional balance.²⁸

The OHCHR's Rule-of-Law Tools for Post-Conflict States relevant to Truth Commissions, published in 2006 also requires the creation of detailed selection criteria and nomination procedures that ensure *public confidence* in the process and the mechanisms.²⁹ It also highlights the importance of publishing the criteria and qualifications in advance.³⁰

COMPARATIVE BEST PRACTICES

A number of countries have established TJ processes in recent years and victims and CSOs in Nepal have been advocating to learn from the comparative best practices, which the Recommendation Committee ignored. For example, while selecting the commissioners for the **South African** Truth and Reconciliation Commission, public nominated Commissioners and appointments were based

²⁴ UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 11.

²⁵ UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 12.

²⁶ UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 6.

²⁷ UN Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010), page 5.

²⁸ UN Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010), page 7.

²⁹ OHCHR Rule-of-Law Tools for Post-Conflict States: Truth Commissions (2006), Selection of Commissioners Section 2.3.

³⁰ OHCHR Rule-of-Law Tools for Post-Conflict States: Truth Commissions (2006), Selection of Commissioners Section 2.3.

on clearly defined criteria, including 1) integrity 2) impartiality 3) record of commitment to human rights 4) professional backgrounds in law, faith-based work, academia, or civil society.³¹ In addition, public interviews and vetting were used to promote transparency.³²

Sierra Leone used an open and competitive process with support from the UN. Selection criteria emphasized independence from political parties, as well as professional qualifications in law, human rights, and conflict resolution.³³ In addition to this, to ensure the impartiality, independence and expertise of the commission, commissioners were appointed jointly by national and international actors.³⁴

Many of Nepal's political leaders have visited **Colombia** to learn from their experience but seems these were wasted resources. In Colombia, for the selection of the commissioners for the Commission for the Clarification of Truth (CEV) a Technical Selection Committee was formed to recommend commissioners in Colombia.³⁵ The committee included international experts.³⁶ Then the committee used objective criteria such as experience with conflict-affected populations, knowledge of TJ and restorative practices, proven integrity and ability to work in a highly polarized environment and gender balance and ethnic inclusion.³⁷ Inclusion was made a mandatory consideration.³⁸

In **Tunisia** members for the Truth Commission were selected by the National Constituent Assembly after a transparent application process.³⁹ The application system included scoring systems and public interviews to evaluate candidates based on published criteria.⁴⁰ The criteria focused on human rights background, judicial independence, and social trustworthiness.⁴¹

³¹ South Africa, Promotion of National Unity and Reconciliation Act, No. 34 of 1995, s 9.

³² South Africa, Promotion of National Unity and Reconciliation Act, No. 34 of 1995, s 9.

³³ Sierra Leone, Truth and Reconciliation Commission Act, 2000, s 3.

³⁴ Sierra Leone, Truth and Reconciliation Commission Act, 2000, s 5.

³⁵ Colombia, Decree 588 of 2017, s 6.

³⁶ Colombia, Decree 588 of 2017, s 6.

³⁷ Colombia, Decree 588 of 2017, s 9.

³⁸ Colombia, Decree 588 of 2017, s 10-11.

³⁹ Tunisia – Organic Law on Establishing and Organizing Transitional Justice, No. 53 of 2013, s 19. Tunisia's selection process

⁴⁰ Tunisia – Organic Law on Establishing and Organizing Transitional Justice, No. 53 of 2013, s 18.

⁴¹ Tunisia – Organic Law on Establishing and Organizing Transitional Justice, No. 53 of 2013, s 17.

KEY PRINCIPLES FOR ESTABLISHING OBJECTIVE SELECTION CRITERIA

To align with international standards and best practices, objective selection criteria for truth commissioners are as follows:

Principles

Merit-Based	Candidates must meet professional standards and qualifications relevant to TJ (e.g., human rights law, psychosocial support, conflict mediation).
Integrity and Independence	Candidates must have a demonstrable history of impartiality and moral authority.
Transparency	All criteria, procedures, and timelines should be publicly available.
Inclusivity and Representation	Gender balance and inclusion of marginalized groups must be ensured.
Public Participation	The public, and especially victims and civil society should have the right to nominate, comment on, or object to candidates.
Accountability Mechanisms	There should be space for complaints, appeals or reviews if criteria are violated.

In Nepal, victims and civil society have raised serious concerns that criteria were not publicly defined or applied consistently, highly qualified individuals nominated by victims' groups were excluded without explanation, the shortlisting lacked transparency, and there was no open vetting or public hearing process. Furthermore, political party loyalty appeared to override merit, violating both the spirit and letter of international standards and best practices.

By failing to adopt and adhere to objective selection criteria, the legitimacy of Nepal’s TJ commissions is severely undermined

LACK OF TRANSPARENCY IN THE PROCESS

Victims have consistently expressed deep concerns that the individuals recommended and ultimately appointed by the Recommendation Committee were selected not based on merit, expertise, or relevant experience, but rather on their political loyalty to major political parties.⁴² This practice, victims argue, seriously jeopardizes their right to effective remedies as guaranteed under both domestic and international human rights law.⁴³

Throughout the process, victims and CSOs repeatedly called for the establishment of objective, publicly available selection criteria.⁴⁴ They urged the committee to clarify the basis on which candidates would be evaluated and to uphold fairness and impartiality.⁴⁵ In consultations with CSOs working on TJ, it was also recommended that the interview process be opened to the

⁴² “We condemn the irresponsible top political leadership for repeatedly pushing for power-sharing, trying to form a weak commission loyal to major political parties without including capable individuals,” said the victim community, “We strongly urge the main political leadership and the government to immediately ensure meaningful representation of the victim community and to adopt a new autonomous recommendation committee and a credible, transparent, and consultative selection process.”, the joint statement issued by 36 conflict victims mentioned this; See: Republica, ‘Nepal: Political Wrangling Stalls TJ Process’ (5 May 2025) <https://myrepublica.nagariknetwork.com/news/transitional-justice-trapped-in-political-quagmire-39-62.html>

⁴³ “We will not accept any process that treats us as mere service recipients while excluding us from decision-making,” “The process was conducted in secrecy, with no transparency or meaningful consultation with victims—the very stakeholders for whom the commissions were established,” mentioned the Joint Public Statement issued by victims on 1 May 2025, See: Republica, ‘Conflict Victims Skeptical, Call for a New Public Selection Process’ (27 April 2025), <https://myrepublica.nagariknetwork.com/news/conflict-victims-skeptical-call-for-a-new-public-selection-process-30-39.html> accessed 11 July 2025.

⁴⁴ “We reiterate our firm position that without a transparent and credible selection process—one that ensures the appointment of capable officials able to carry out the serious, specific, and multi-dimensional national task of transitional justice independently and without interference—the process will not reach a legitimate conclusion,” statement of Accountability Watch Committee, Amnesty International-Nepal, AF, INSEC, JuRI-Nepal and LACC. See: DMN News, ‘Six Human Rights Bodies Call for Credible Selection Process and Appointment of Competent Officials in Transitional Justice Commissions’ (27 April 2025) <https://thedmnnews.com/six-human-rights-bodies-call-for-credible-selection-process-and-appointment-of-competent-officials-in-transitional-justice-commissions/>, accessed 11 July 2025. _

⁴⁵ “We have repeatedly stressed the need to integrate consultation with victims into the core of selection process, to clearly define and publicly disclose the methods, processes and criteria for evaluating suitability, to ensure objective evaluation based on these criteria, to conduct mandatory background checks before shortlisting candidates and to ensure transparency through practices such as public hearings”. See: The Kathmandu Post, ‘Transitional Justice Selection to Proceed Ignoring Victims’

public, including media, victims, and CSOs, to foster transparency and restore confidence in the process.⁴⁶

Despite these calls, the process remained opaque. On 20 April 2025, the committee received 111 applications from prospective candidates, including former judges, retired civil servants, human rights activists, and conflict victims. Of these, 82 were individual applications, while the remaining 29 nominations were submitted by 16 different organizations, including several victim-led groups.⁴⁷

Soon after, the committee released a shortlist of 34 candidates. Among these, 8 individuals were shortlisted for the two chairperson positions, and 26 were shortlisted for commission member roles. However, a closer examination of the list revealed that 28 out of the 34 names were repeat candidates from previous nomination rounds, raising concerns about a pre-determined or recycled list rather than a genuinely open and competitive selection.

Equally concerning was the underrepresentation of women, only 6 female candidates were included in the final shortlist of 34. Victims and CSOs viewed this as further evidence of exclusion and a lack of sensitivity to issues of diversity and gender balance, which are integral to TJ standards.

The lack of transparency in the shortlisting process, particularly the absence of published criteria, evaluation methods, or explanations for exclusion, left victims disillusioned. Many believe the process was designed to favor politically connected individuals over those with moral authority and technical qualifications.

On 18 May 2025, various victims' groups filed a Right to Information (RTI) petition seeking specific details on the basis for candidate selection, including scoring systems, vetting procedures, and the rationale behind disqualifying

Calls', 7 May 2025, <https://kathmandupost.com/politics/2025/05/07/transitional-justice-selection-to-proceed-ignoring-victims-calls>, accessed 11 July 2025.

⁴⁶ AF, 'Report on the Discussion meeting on the current TJ Context, Reaffirmation of Collective Position and Way forward', 17 April 2025. The report can be accessed from the archive of the Transitional Justice and Research Department of AF.

⁴⁷ The Kathmandu Post, '110 Seek Positions in Transitional Justice Commissions', 21 April 2025, <https://kathmandupost.com/national/2025/04/21/110-seek-positions-in-transitional-justice-commissions>, accessed 11 July 2025.

widely respected nominees. The Committee, however, failed to provide any details, reinforcing the perception that the selection process was neither fair nor objective.

This perceived lack of objectivity and accountability has not only undermined the legitimacy of the commissions, but has also triggered renewed mobilization among victims, who now question the overall credibility of the TJ mechanisms and process in Nepal.

INTERNATIONAL STANDARDS AND BEST PRACTICES ON TRANSPARENCY IN THE SELECTION OF TRUTH COMMISSIONERS

Transparency is considered to be a foundational principle in the design and operation of any transitional justice mechanism. The lack of transparency in the selection of commissioners can lead to loss of public trust, political manipulation, and ultimately failure of the commissions' mandate. International frameworks and comparative practices emphasize openness, clarity, and accountability at every stage of the process.

For example, the UN Updated Principles to Combat Impunity (2005) stipulate that truth-seeking bodies must be created through transparent procedures.⁴⁸ Victims and the public must be informed of the process, criteria, and powers of the commissions.⁴⁹ It also requires public access to information, including selection procedures and qualifications of appointees.⁵⁰

Similarly, the UN Secretary-General's Guidance Note on Transitional Justice (2010) calls for transparent and inclusive selection processes, particularly for leadership positions.⁵¹ It also emphasizes publication of procedures, criteria, timelines, and decisions, with space for public comment.⁵² It urges states to

⁴⁸ UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 11.

⁴⁹ UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 6.

⁵⁰ UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 6.

⁵¹ UN Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010), p. 5.

⁵² UN Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010), p. 7.

ensure victim awareness and oversight throughout the process.⁵³ The OHCHR Rule-of-Law Tools for Truth Commissions (2006) also state that credibility and legitimacy depend heavily on transparency during the commission's formation.⁵⁴ Thus, it recommends that all phases (from nomination to appointment) should be open to public scrutiny, with opportunities for input, challenge, and monitoring.⁵⁵

COMPARATIVE BEST PRACTICES

In **South Africa**, the appointment process was made transparent by making open nominations and public interviews broadcasted on national television. Candidates' names and backgrounds were published for public comment, and civil society organizations were consulted. This fostered broad national legitimacy and public ownership.⁵⁶

In **Sierra Leone**, while appointing the commissioners for the TRC, international oversight and publicly documented procedures were followed. Civil society and victims were consulted in the drafting of rules, and appointment decisions were explained publicly.⁵⁷

The CEV in **Colombia** used a Technical Committee that operated with public criteria, detailed selection reports, and streamed candidate presentations.⁵⁸ A public comment period allowed stakeholders to submit objections or endorsements. Final decisions were published along with justifications, ensuring full transparency.⁵⁹

⁵³ UN Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010), p. 4.

⁵⁴ OHCHR Rule-of-Law Tools for Post-Conflict States: Truth Commissions (2006), Selection of Commissioners Section 2.3.

⁵⁵ OHCHR Rule-of-Law Tools for Post-Conflict States: Truth Commissions (2006), Selection of Commissioners, Section 3.2

⁵⁶ Promotion of National Unity and Reconciliation Act, 1995, s 7-9, also see TRC Final Report, Volume 1, Chapter 4, Mandate and methodology.

⁵⁷ Sierra Leone TRC Act, 2000, Sections 4-6, also see TRC Final Report, volume 1, section 2.1.

⁵⁸ Decree 588 of 2017, Articles 6, 9, 10.

⁵⁹ Decree 588 of 2017, Articles 6, 9, 10.

In **Tunisia**, selection process included public disclosure of candidate names, CVs, and public vetting. Media and civil society observers were integrated into the process.⁶⁰

KEY PRINCIPLES TO ENSURE TRANSPARENCY

To meet international best practices and standards, the following transparency measures and mechanisms are expected to be in place.

Public Call for Applications	Broad dissemination through media, websites, and outreach to conflict-affected areas and people.
Clear Timeline & Procedures	Published schedule of steps from application to appointment, accessible to all.
Published Criteria & Qualifications	Public availability of selection criteria and expected qualifications.
Public Shortlist of Candidates	Shortlisted names, along with bios or resumes should be made public for scrutiny.
Open Public Comments or Hearing	Mechanism for victims, civil society, and the public to provide input or raise concerns
Rationale for Selection	Final appointees should be announced with written justifications for their selection.
Independent Monitoring or Oversight	Inclusion of national human rights institutions, civil society observers, or international experts to monitor fairness.

⁶⁰ Organic Law on Establishing and Organizing Transitional Justice, No. 53 of 2013, Articles 17-19.

If we view the process the Committee adopted in Nepal, there was no formal public hearing nor vetting of shortlisted candidates. The 10-day application period was rushed, with limited public awareness. Criteria were not published, and victims' nominations were excluded without explanation. The shortlist and final selection lacked justification, feeding rumors of political deals and favoritism. Requests for transparency, including RTI (Right to Information) requests, were ignored.

These failures directly contradict international best practices and have led to a loss of trust among victims and civil society

LACK OF VICTIMS' PARTICIPATION

Victim and CSO participation is not merely a procedural formality, it is a cornerstone of legitimacy, credibility, and effectiveness in TJ. International norms recognize that those most affected by conflict and violations must be at the center of the process, particularly in shaping mechanisms such as truth commissions and reparations bodies.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005) provides that victims have a right to access information.⁶¹ Their views must be considered in designing and implementing justice mechanisms.⁶²

The UN Secretary-General's Guidance Note on Transitional Justice (2010) states that victim participation as a critical component of effective TJ⁶³ and recommends institutionalized mechanisms for engaging victims and CSOs throughout the process, including in the appointment of commissioners.⁶⁴

⁶¹ UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 6.

⁶² UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Also known as the Joinet-Orentlicher Principles), 2005, Principle 6.

⁶³ UN Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010), p. 5.

⁶⁴ UN Secretary-General's Guidance Note on the United Nations Approach to Transitional Justice (2010), p 7.

COMPARATIVE BEST PRACTICES

In **Colombia**, victim participation was institutionalized through formal seats in the selection committee.⁶⁵ Victims' organizations were consulted at every stage of the process and could propose or object to candidates. Participatory processes led to widespread legitimacy and international praise.⁶⁶

In **South Africa**, victims were given platforms to testify, influence the agenda, and shape the narrative.⁶⁷ Civil society played a key role in the nomination and vetting of commissioners.⁶⁸ Engagement created a sense of ownership and accountability in the truth-seeking process.⁶⁹

In **Sierra Leone**, CSOs were involved in drafting the law that created the TRC. Victims' groups were part of outreach, education, and the selection processes.⁷⁰ Their inclusion helped the commission gain grassroots support.

In **Tunisia**, victims and CSOs were consulted publicly and consistently during the creation and operation of the commission. NGOs monitored proceedings, contributed to criteria-setting, and ensured continued oversight.⁷¹

RECOMMENDED STANDARDS FOR PARTICIPATION

Formal Consultation in Selection

Victims and CSOs must be involved in drafting criteria, proposing candidates, and vetting commissioners.

⁶⁵ Decree 588 of 2017, Articles 6 and 10.

⁶⁶ Comisión de la Verdad – *Informe Final*, Methodology Annex.

⁶⁷ Hayner, Priscilla B. (2010). *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, chapter 4, Promotion of National Unity and Reconciliation Act, 1995, Section 7(2), TRC Final Report, Volume 1, Chapter 4: Establishment and Mandate.

⁶⁸ Hayner, Priscilla B. (2010). *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, chapter 4, Promotion of National Unity and Reconciliation Act, 1995, Section 7(2), TRC Final Report, Volume 1, Chapter 4: Establishment and Mandate.

⁶⁹ Hayner, Priscilla B. (2010). *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, chapter 4, Promotion of National Unity and Reconciliation Act, 1995, Section 7(2), TRC Final Report, Volume 1, Chapter 4: Establishment and Mandate.

⁷⁰ TRC Act of 2000, Section 4, TRC Final Report, Volume 1, Section 2.1: *Establishment of the TRC*.

⁷¹ Organic Law No. 53 of 2013, Articles 17–19.

Representation in Oversight Bodies	Seats in advisory or selection panels should be allocated to victims' representatives or respected CSO leaders.
Access to Information	Victims should have full access to documents, procedures, and timelines related to the selection and operation of TJ bodies.
Mechanisms for Objection/ Appeal	Victims and CSOs should have the legal right to raise concerns or file objections to shortlisted candidates.
Public Hearings and Commentary	Opportunities must exist for victims to comment on candidates before appointment.
Continuous Engagement	Involvement must continue during the operation of commissions, not only during selection.

RELEVANCE TO NEPAL'S CONTEXT

The Recommendation Committee excluded victims and CSOs from drafting selection criteria, reviewing candidates, or commenting on the shortlist. No institutional mechanism existed for CSOs or victims to challenge or validate selections. Highly qualified individuals recommended by victims were ignored without explanation. The government and committee bypassed civil society engagement, despite repeated requests and memorandum. Victims have instead been subjected to defamation and dismissal, undermining their trust and dignity.

This exclusion contradicts Nepal's commitments under international human rights law and sets a dangerous precedent for future transitional justice efforts.

THE PERPLEXING TIMELINE

The timeline followed by the Recommendation Committee has raised serious doubts among victims and civil society regarding the credibility of the selection process. Victim-nominated candidates received notices on 24 April

2025 requesting them to submit their consent and supporting documents on the same day the request was issued. In one instance, only after a candidate personally visited the secretariat of the Recommendation Committee to raise the issue was the deadline extended by a single day.⁷²

The shortlist of 34 candidates was published on Sunday 27 April 2025. By then, many victims and CSOs had already begun expressing concern that the chairpersons and some commission members had been informally agreed upon well in advance. They alleged that the selection process functioned merely as a formality to legitimize pre-determined political deals rather than a genuine effort to assess and appoint the most qualified candidates.

The 10-day application period began on 10 April 2025 (Thursday). However, within that timeline, there were three public holidays:

- 12 April (Saturday) – regular weekly public holiday
- 14 April (Monday) – Nepali New Year
- 19 April (Saturday) – another weekly public holiday

These public holidays effectively reduced the active application period to just seven working days, significantly limiting the ability of interested candidates, especially those from rural or marginalized areas, to prepare and submit completed applications.

In addition, the wider perception about weak legitimacy of the Committee largely deterred people with qualifications, expertise and integrity to have any interest in applying or serving the Commission. Despite this compressed window, the committee received 111 applications, including submissions from former judges, senior bureaucrats, human rights defenders, legal experts, and conflict victims indicating that the pool of candidates was both diverse and highly competitive.

⁷² *The Kathmandu Post*, 'Victims Reject Transitional Justice Shortlist, Demand New Selection Panel', 2 May 2025, <https://kathmandupost.com/national/2025/05/02/victims-reject-transitional-justice-shortlist-demand-new-selection-panel>, accessed 11 July 2025, para.8 and 9.

Only six days after the application deadline, the committee published its final shortlist of 34 names on 27 April 2025. Notably, 28 out of the 34 candidates were names repeated from previous shortlists, sparking further allegations that the process had been orchestrated in advance.⁷³ Victims and observers have pointed out that six days is a remarkably short timeframe to thoroughly review over a hundred applications for such high-stakes and sensitive positions.

Given the caliber of applicants and the significance of the roles, it is reasonable to expect a rigorous evaluation process. Instead, the speed and predictability of the outcome suggest either that applications were not reviewed carefully, or that the list had already been finalized before the call for applications even began.

These procedural irregularities have only deepened mistrust among victims and civil society, reinforcing the perception that the selection process lacked both **transparency and integrity**.

CONCLUSION

Victims and CSOs participation in any selection process and TJ process more generally is not optional, it is a human right. Their exclusion invalidates the TJ process and breaches Nepal's domestic and international obligations. In their recent letters to the international community, victims have set out the following important demands as a way forward:

- **Immediate Suspension and Redesign of the Process**

We urge the Government of Nepal to **immediately suspend the current process** and initiate a **new, transparent, inclusive, and victim-centric mechanism** for the appointment of new competent and independent office bearers. This must be done in **genuine consultation with conflict victims and civil society organizations (CSOs)**.

⁷³ *The Kathmandu Post*, 'Calls Grow for Proper Vetting of Transitional Justice Candidates', 28 April 2025, <https://kathmandupost.com/national/2025/04/28/calls-grow-for-proper-vetting-of-transitional-justice-candidates>, accessed 11 July 2025.

- **Call for Resignation of Appointed Commissioners**

We call on the newly appointed members of the TRC and CIEDP to step down voluntarily in recognition of the process's failure to uphold democratic, legal, and human rights principles. This would help pave the way for a more meaningful and credible transitional justice process.

- **Our Right to Justice Must Remain Intact**

The commissions, formed through a flawed and politically compromised process, must not be used as a tool to obstruct or limit our right to pursue truth, justice and justice through the regular national and international judicial mechanisms.

- **International Community: Do Not Endorse the Flawed Process**

We call upon the international community, donors in particular, not to legitimize or support these commissions, which have failed to meet the minimum standards of independence, impartiality, and victim participation and further support Nepal to entrench the crisis of impunity in the country.

- **Support Victims and CSOs for an Alternative Truth-Seeking Process**

We urge international partners to support the creation and development of an **alternative, victim-led truth-seeking process**, which operates with transparency, moral authority, and public trust.

- The End -

