



Portfolio Review Document
“Transitional Justice & Impunity in Nepal”
Nepal & Bhutan Initiatives

I. Introduction to the Portfolio:

This portfolio examines the Nepal & Bhutan Initiatives (NBI)’s work to date on programming and funding aimed to promote Transitional Justice (TJ) and challenge impunity in Nepal. Constituting the bulk of NBI’s human rights funding, our work in Transitional Justice essentially began with the inception of the NBI itself and was one of our founding principles as “strengthening the rule of law” was central to our mission in Nepal, and remains so to this day. When OSF entered Nepal in 2006 to explore funding opportunities during the initial period of constitution-drafting after the ten year conflict ended in 2006 with the Comprehensive Peace Agreement, it was clear that Transitional Justice would have to be a critical component of any strategy working to ensure a lasting peace in the country and a successful transition to a functional democracy where the conflict’s opposing sides could share power peacefully and responsibly.

In the post-conflict (or rather, the protracted conflict) context our work in Transitional Justice began as and continues to be a core part of NBI’s portfolio and strategy, forming the basis of our broader human rights agenda in the country. The portfolio includes: NBI’s direct grants to organizational grantees working in TJ; coordinated advocacy campaigns at the local and international level; activities to build a network of victims’ societies and human rights defenders capable of mobilizing in times of crisis; a fellowship for a human rights activist; cases of direct litigation pursuing universal jurisdiction; and direct interventions by the ASD, its Board, and its partners in national debates. The work presented here in this portfolio was primarily funded through NBI’s own budget and facilitated by the Alliance for the Social Dialogue. A number of grants to Transitional Justice organizations were occasionally co-funded by other network programs, specifically by the Women’s Rights Program, or rather by the IWP that for a few years functioned as a thematic program partner in the area of Human Rights because there was no specifically HR-oriented grant-giving program with a mandate to work in Nepal at that time.

The close examination of this portfolio offers us the opportunity to reflect on our strategy to date, the gains – and miscalculations – we have made, the dramatic changes to the field in the past six months, and to consider ways of re-calibrating our approach accordingly to ensure gains made are not lost. After the results of the November 2013 elections and recent retaliatory events against TJ that unfolded this April (described in more detail in Section II) the field has changed significantly in a short period of time, and the current landscape could be described as volatile at best. The NBI is now faced with heightened challenges in transitioning long-term district grantees to be close ASD Network partners without continued funding. This must be done while also still ensuring that their effective TJ work can continue.

Similarly, we must also help our national-level TJ partners to be more resilient as organizations in the case of continued counter attacks, which are likely to happen.

Our portfolio of work in Transitional Justice is at a crossroads: What grants must we consider dropping in the existing portfolio without losing the organizations as our network partners? How can we help support organizational development building of our existing Transitional Justice grantees that are facing difficulties? How can we augment our resources for justice reform through thematic network program collaboration? We hope the Portfolio Review discussion will help us to address these strategic questions.

II. The Transitional Justice Landscape at Present and NBI's Role To-Date

Before the elections in November 2013, in the priority area of Justice and Human Rights, OSF focused almost exclusively on Transitional Justice as the last line of defense against forces of impunity and violence. For this reason, TJ is sometimes described in our strategy documents as fight against impunity, opposition to violence, etc. because we understand these terms as near synonyms.

The elections results that significantly weakened the dominant radical forces that stood in opposition to TJ came as a surprise – we expected our work would be required to be on the defensive for at least one more election cycle. In the newly opened space after the elections, we were preparing to adjust our tactics and charge forward to support the building of a more effective justice system, primarily including efforts to increase access to justice and legal aid services, which we see as critical to sustaining the gains made through the work on Transitional Justice. It is almost certain that if the newly strengthened democratic framework does not respond to demands from underprivileged groups for justice delivery, political violence will stage a comeback in the near future.

These promising beginnings for TJ work signaled after the elections were further exemplified by the Supreme Court's landmark decision in January 2014 instructing the government to strengthen TJ provisions in the draft Truth and Reconciliation bill under consideration by the newly elected Constitutional Assembly. However, our assumptions were challenged once again when soon after these encouraging advances, a backlash was initiated in April, targeting individuals and organizations prominent in the TJ area. The argument against these activists and institutions was that they used foreign funding to undermine and stall the peace process by insisting on the incorporation of TJ mechanisms in the new government. While the argument itself wasn't new, the ferocity of the attack was unprecedented, as was the fact that all political parties, both traditional and revolutionary, joined hands in denouncing such "traitors". It has become clear that the judiciary is far ahead of the government, and its rulings are not necessarily indicative of changes in the attitudes of the elected powers. This recent development has made us question our previous expectations for an easier fight on the Transitional Justice front after the elections as having been too optimistic. We will now need to pay even closer attention to, for which we are dependent on the on-the-ground monitoring work of the ASD, and continue supporting TJ into the future.

For this reason, we cannot afford to abandon our Transitional Justice portfolio. We have undoubtedly made positive gains: issues of TJ are now prevalent in the national discourse, a number of cases have been filed at the local level, and the national capacity for advocacy efforts has been significantly strengthened through our networking efforts and the formation of advocating independent bodies. However, these advances have not been consolidated sufficiently and we cannot yet vacate the defensive space we have created. Our key partners in the Transitional Justice space are caught in the middle – facing their own internal challenges and funding crises after coming under attack – which makes our continued support all the more vital.

During the April attack on TJ some methods familiar from other previous campaigns were employed: an innuendo is created about possible corruption in an NGO, and demands follow for profound auditing. Some donors duly comply, and the resulting findings are blown beyond proportions. These allegations, typically made in the media, are followed by a frenzy in the press and the wild spread of misinformation, instigating nasty debates that attack personal character and seek to demonize individual activists. Perhaps most devastatingly, these attacks also target the intentions of foreign institutions and diplomatic missions. International actors, already hesitant to support TJ, will now further distance themselves from TJ and TRC drafting efforts because of the political divisiveness of the issue, for if they do, they risk being pushed out of the country entirely, as was the fate of the OHCHR in 2012.

This same method of offense was used against OSF’s human rights grantees (notably the Blue Diamond Society working in advancing LGBT rights, and the Advocacy Forum). In April an additional grantee and partner, Himal Southasian, a progressive news source, was subject to similar smear campaigns in the media. Himal was however well-prepared with impeccable bookkeeping, so it is likely to survive unscathed. BDS and AF, on the other hand, whose bookkeeping was less clear, are now facing existential difficulties, and may collapse, leaving a gaping hole in the human rights field.

In reflecting on our role in this current landscape, NBI was certainly instrumental in the successful pursuit of sensitive projects, where our support allowed particularly emblematic cases to advance in courts. Outside of financial support, our ability to network and provide international contacts and connections to the larger TJ community for the Advocacy Forum was indispensable to their continued international advocacy. It is also clear that NBI played a noteworthy role in the building of the national-level TJ movement. Whether or not this can be solely attributable to NBI’s support and intervention, or if frustration with the prolonged and stalled political and TRC formation process fueled this movement, our efforts certainly played a part in cultivating and growing the national movement. At the same time, it seems we may have become victims of our own success in provoking retaliation against our grantees and the entire field.

III. Discussion of Portfolio Elements and Summary of NBI’s Approach to Date

The TJ portfolio itself can be seen as having tactical elements and staking a defensive line against attempts at state capture by undemocratic forces. Criminal responsibility for HR violations is the ultimate protection against ideologically motivated “owners of the truth” who would like to force their

vision down everybody's throat. This portfolio of work employed a combination of tactics to advance changes in the field and advocate for the carrying out of TJ, particularly for the incorporation of effective mechanisms for TJ within the new constitution. Through a combination of local-level NGO work, national-level NGO work, coordinated efforts between these levels, and advocacy at national and international levels, the NBI sought to effect change at various levels in a variety of venues. This portfolio identifies the components of and seeks to analyze the success of this multi-pronged approach.

A. Organizational Grants:

1. Grants to Local-level NGOs:

Organizational grants were made to local-level, grassroots organizations throughout Nepal, primarily in those remote regions where the insurgency first took place and with historically little political voice and recognition from the capital. The activities conducted by these NGOs in support of TJ typically included documentation of violations, legal aid service, case filing, victims groups' formation, human rights education, and publishing of information related to violations. These grants were referred, facilitated and monitored by the ASD. The ASD also worked to coordinate these actors in synchronized efforts across the nation. The support of local NGOs serves to stimulate activity on the ground and create a network that can be quickly mobilized in times of need. This creates a type of nation-wide movement that is situated around a common central agenda and raises the discourse on TJ in remote areas where it otherwise may not have been raised.

With the help of our local-level partners, we were able to make TJ a part of the national discourse, and in some cases, to spark new discourses altogether in regions where TJ was not adequately addressed. This grassroots effort also figured prominently in making TJ relevant to the campaigns leading up to the 2013 November elections. A small, short-term grant to the Informal Sector Service Center (INSEC) provided funding to effectively disseminate information on the human rights records of the candidates, ensuring that the public was well-informed on the past abuses of political candidates. This project served to hold political actors accountable for their past actions and promote an environment of transparency and respect for human rights, as well as instill national confidence in the overall validity and transparency of the election process.

The impact of our small district-based projects lies in the creation of an agile and responsive network of small organizations connected by a common cause. This network in a way constitutes a "national" base for the ASD that can be mobilized on important issues. For example, even now, during the current backlash, a coordinated response from the districts to send SMS messages to Members' of Parliament publicly available mobile phone numbers, helped to subdue the antagonistic atmosphere.

Perhaps the biggest challenge with this approach is how to transition these existing long-term grantees into "partners" i.e. how to taper down OSF funding and make them active partners within the ASD network. This will be particularly difficult because all of these grantees are very

small NGOs who are primarily reliant on OSF funds and have little capacity to fundraise. While weaning them off of funding, the NBI hopes to find a way to build their capacity to ensure that they can continue their critical work. A continued relationship with the ASD, is crucial to best handle this challenge.

2. Grants to National-level NGOs:

Alongside funding for the district-level grantees, larger grants were made to leading national-level NGOs based in Kathmandu who have their own networks of human rights defenders across the country. These organizations are the primary leaders in the field, are more visible on the national and international scale, and set the national agenda on TJ work. They carry out critical work in the documentation of violations, the building of case databases to be used in any future trials, and the carrying out of litigation in the local and national courts. These organizations also pursue their own advocacy efforts nationally and internationally, often with the financial support of the NBI (described below in Section III C – International Advocacy Program).

The national grantees are important both through their project activities, and their presence in the field. The Advocacy Forum has made a tremendous impact through its relentless advocacy, both domestic and foreign. After the arrest of Colonel Lama in the UK last year under universal jurisdiction, attacks on the Advocacy Forum intensified, and strangely coincided with the alarmist European Commission audit that has created tremendous damage to the organization as a whole. The work of our other national grantees (DFHRI, INSEC) has become such a nuisance for the authorities, that they provoked a hostile attack against the entire field. The immediate challenge the NBI now faces is in helping our national partners, who are very visible in the field, to become less vulnerable in future inevitable counterattacks which are a testimony to their effectiveness, but may also destroy them.

B. Individual Grants:

1. European Council on Foreign Relations Fellowship:

This fellowship for Mandira Sharma, former Director at the Advocacy Forum Nepal, aimed to strengthen European support for accountability in Nepal, and advocate for a more proactive stand against impunity in the country. The fellowship provided opportunity for Ms. Sharma to engage with governments, donor agencies, NGOs, and foreign policy organizations about the urgent need for stronger positions and a more proactive approach in Europe on the problems of impunity and violence in Nepal.

Mandira's fellowship has been modestly successful. Huge gains were not made, largely due to the inherent difficulty of independently advancing any agenda on a small nation that is strategically and politically irrelevant to most European nations. Nevertheless, important contacts have been made, relationships have been cultivated, and members of European Parliament have been made aware of Nepal's situation. Mandira's work has laid the groundwork for future advocacy efforts, hopefully undertaken by the Asia Regional Office, which hopes to develop a regional arm for advocacy. The potential for international advocacy efforts has yet to

be tapped with NBI's limited budget and decision to more effectively dedicate our limited resources to funding direct, small-scale interventions on the ground. With the incoming of the Asia Regional Office, we are hoping for a larger Asia-specific advocacy within the OSF, of which advocacy on Nepal will be a critical component.

2. ASD Secretariat & Board Member Direct Interventions:

This Portfolio element was not included in our original chart of submitted Portfolio Elements because this specific element was devised and incorporated only in later May after the described shift in events in April. Serving as a new and more direct approach, ad-hoc interventions in the field are made on an as-needed basis organized by the ASD Board and Secretariat to address important developments.

For instance, during the anti-TJ backlash in April, which was also trying to push through a watered-down TRC Bill, ASD Board Chair Sushil Pyakurel organized a meeting of all HR Commissioners, current and former, which found the bill faulty, and had a huge impact on the debate. As a result of Sushil's intervention, the Constitutional Assembly announced it would consider amending the bill. Aside from this particular instance, ASD Secretariat and Board Members, namely Hari Sharma and Sushi Pyakurel, have made appearances at political events across the country and issued statements in the name of the Accountability Watch Committee. This quiet diplomacy has actually garnered responses from the Constitutional Assembly and other political actors.

C. Direct Advocacy – International Advocacy Program:

There are three primary components to the NBI's supported advocacy efforts, referred to here as the "International Advocacy Program", which work together to advocate and raise awareness on continued impunity in Nepal from the local level to the international arena. The advocacy is conducted in the name of the umbrella organization the Accountability Watch Committee, and is coordinated by the ASD, with the assistance, where available, of local civil society groups in target countries, like the German Nepal-Dialogforum für Frieden und Menschenrechte.

The ASD's activities as part of the International Advocacy Program include: coordination between different grantee organizations working on transitional justice issues on the ground and connecting them to the larger national network, as well as the mobilization of victims and local civil society organizations to demand transitional justice mechanisms at the grassroots level.

1. International Advocacy:

The core activities of the International Advocacy Program include: travel to Berlin, London, Geneva and Brussels by prominent Nepali HR Defenders, primarily Mandira, to provide briefings on the situation in Nepal in order to influence the agendas of the OHCHR and each country's parliament to increase pressure on Nepal. As was described in regards to Mandira's fellowship, it was difficult for us to gain any significant traction in this arena. Again, it is hoped that issues of TJ in Nepal can become a part of Asia Regional Office's future advocacy capacity.

2. Accountability Watch Committee (AWC):

The AWC is an informal, unincorporated panel of human rights defenders and activists that functions as an umbrella organization on TJ issues. The AWC does not accept funding so that there is no implication of foreign meddling, and no allegations on the misuse of funds can be made, a strategic decision that has proven to be particularly beneficial after the events of April. The panel monitors political developments on the TRC bill and Disappearance Commission, and meets regularly to devise agendas for intervention and pressure. NBI and the ASD jointly devised the concept and structure for the committee, but do not provide financial support. As such, the AWC is a respected, non-partisan voice not associated with any donor, and therefore relatively safe from attacks. The AWC has been instrumental in advising the NBI on its TJ strategy, and in exerting pressure on the Constitutional Assembly to revise the toothless TRC bill.

3. ASD Networking Activities:

As described above, the ASD brings together small grantee organizations from across the nation, working to unite the effort together at the grassroots level – so that efforts are happening simultaneously and in concert with one another. As a direct result of ASD’s coordinating efforts, the TJ discourse has been strengthened at both the national and local level.

D. Litigation:

The NBI has only taken on one project supporting direct litigation. This is not for lack of belief in litigation’s efficacy or importance, but rather for the lack of opportunities in litigation funding: to-date no major cases have been filed at the national level for perpetration of human rights violations during the conflict.

1. Legal Research Project:

This project supported the Legal Research Project, an NGO based in London, in direct litigation for the high-profile case enforcing universal jurisdiction for human rights crimes committed during the conflict. This particular case sent shock waves through the judicial system internationally, raised the profile of the human rights situation in Nepal among international media outlets, and served to prove that the international community will act on seeking justice for human rights violations in Nepal.

E. Other Actors in the Field whom NBI does not fund:

Due to NBI’s modest budget and dedication to other critical causes in Nepal, such as the support of independent media and access to education, the NBI simply cannot support all TJ actors. NBI has chosen to fund those that have strongest national voice, and whom the ASD has had closer relationships with. NBI follows opportunities for collaboration where it best seems fit and has only limited resources. The remainder of the TJ field is composed primarily of international commissions, or international organizations, such as the ICJ and Amnesty International, whom NBI coordinates closely with, but the NBI reserved its financial support for local Nepali organizations and Nepali-driven efforts.

IV. Impacts

NBI's efforts had an impact, or "worked" in the sense that issues of impunity have now become part of both the local and national discourse, as well as a clear component of election campaigning. This was NBI's objective and we succeeded in making TJ issues relevant to the public. However, this success eventually provoked a backlash from the establishment. This was an unintended consequence of our work that poses a potential low-level threat to our future work. Did NBI's efforts ultimately make the TJ field stronger, but more vulnerable?

Considering this, what our work failed to do was strengthen the key, national-level NGOs to be able to withstand attacks on their accounting practices. There were two primary reasons for this: general poor accounting, and the organizations' reliance on project-based funding rather than core operational support.

IV. Lessons Learned

1. Political developments happened faster than our strategizing.

Programmatic strategies made on an annual basis are subject to tremendous change: political developments happen at a pace that is faster than our strategizing. NBI must remain flexible and capable to respond quickly, continue closely monitoring, and continue our reliance on the ASD on-the-ground.

2. Key partners are too vulnerable to attacks

The approach of funding these organizations for specific projects proved to contribute to these organizations' vulnerabilities. We need to switch to core funding for crucial players, otherwise we will keep losing them through coordinated attacks targeting their accounting. We also need to develop capacity to strengthen our grantees internal systems and governance structures, through partnerships with specialized outfits like Accountants for International Development (AFID) who is now currently working with the Advocacy Forum. It is also a common pitfall of dynamic organizations to struggle with leadership transitions after the departure of a charismatic founder and leader, as again was the case with Advocacy Forum. By focusing on an organization's internal operations, we can help to ensure that the organization has staying power and they can survive such attacks.

Our strategy with funding local grantees in the districts, and networking them for common causes, in essence worked out. Something of a movement has been created, and played a role in the debates around TJ. The smaller grantees largely escaped the fallout and backlash against TJ in April. The backlash did affect our national grantees, though. In retrospect, we should have paid more attention to their internal structure, and also dealt more systematically with the fundamental problem of all NGOs in Nepal, which makes them vulnerable in times of crises: they almost exclusively operate on the basis of

project funding, and to support their core operation, inevitably start playing tricks with budget lines, eventually. A deep audit will probably find fault with just about any organization.

We have made attempts to switch to core funding for essential partners, like the AF, with the help of thematic programs. Unfortunately, this effort didn't lead us very far, and it may be too late for some of our grantee organizations by now.

V. The Way Forward: Next Steps & Possible Strategy Refinements

The NBI will consider funding for the organizational development of key partners to institute internal systems such as proper bookkeeping, hiring practices, etc that keep these critical partners immune from attacks. We are already considering a possible relationship with the aforementioned AFID. NBI should also shift its funding strategy to award more core support in order to free our organizations' reliance on project-based funding which then demands constant shifting of funds from account to account.

After assessing the portfolio and the current needs of the TJ field, it is clear that TJ work is under-budgeted. In order to be able to cover both Transitional Justice efforts to secure past gains and legal empowerment work to broaden these gains, as well as consider core support for crucial grantees, the NBI will need to access funds outside of its own budget. In order to achieve this strategy, the NBI will need to mobilize additional resources from the OSF network, including thematic programs and reserve funds.