**Asia Regional Office, Nepal & Bhutan Initiatives**

**Portfolio Review: Transitional Justice and Impunity in Nepal**

**Outcomes Summary**

**May 23, 2014**

Chris Stone opened the discussion by outlining the Portfolio Review process, after which Martin Hala began by elaborating on the theory behind the Nepal & Bhutan Initiative’s (NBI) strategy and portfolio of work on Transitional Justice (TJ). Martin described the NBI’s aim to introduce TJ into the political discourse, and to use TJ as a defense line against the extremist ideologies that were responsible for the recent conflict and could very well incite violence again in the future. NBI aimed to achieve this with a two-fold approach: by supporting small, grassroots district-level organizations in order to build a coordinated country-wide network advocating for TJ (facilitated by the ASD) while also supporting larger, national organizations for advocacy work at higher levels (facilitated by the NBI). Martin identified two fundamental problems with this approach: (1) the failure to structure and adequately facilitate the development of our larger, national-level organizations in such a way that they were resilient to political attack and (2) the underlying assumption in this strategy that politics move linearly. Hari Sharma continued the presentation, by describing the ASD’s approach to finding local grantee partners in the field, which are led by strong activists who are able to hold and defend democratic space in far-flung areas. Hari noted that such successful activists often lack the skills needed to develop a sustainable organization. The ASD sought to work with local partners who could build a national network and united front across all human-rights related issues, particularly TJ.

The discussant, Ingrid Massage, then presented a brief outline of TJ’s history in Nepal and described the current post-conflict political landscape. In the previous decade, TJ issues benefited from a coordinated effort among the international community to galvanize support for human rights, which resulted in the entry of the OHCHR in 2005. However this presence has significantly reduced overtime and the OHCHR was forced to depart in 2012, after which the country’s National Human Rights Commission was stripped of any real power. At present, there are no international Human Rights actors working in Nepal and human rights has lost resonance overall, as the international community has turned away for fear of being blamed for intervening and stalling the peace process. She cited that meanwhile, victims’ voices and demands continue to go unheard and unanswered by government powers.

Ingrid pointed to the undeniable role of geopolitics on the issue and its recent rise as China and India’s influence grow in Nepal. She also described the historical setting, emphasizing that impunity has existed since Nepal’s origins as a feudal society of patronage under successive monarchies, and one wherein the voices of the marginalized have never been incorporated into political conversations and decisions. Ingrid flagged two issues: (1) the overall weakening and dividing of civil society in Nepal, as evidenced by: frequent attacks on Human Rights Defenders, the fractured Human Rights field, recent accusations in the media of foreign donors for meddling in and stalling the peace process, tightening restrictions on the operations of NGOs and INGOs, and the inability of any public social movement (such as the Occupy Baluwatar movement) to gain traction, and (2) the prolonged constitution drafting process which further compromises the already fragile peace, but also offers us an invaluable opportunity for influence over the new constitution. She closed by identifying the opportunities she sees wherein OSF support would be the most impactful, including: increased intervention with the media on TJ coverage, advocacy within the constitution drafting process (particularly on the chapter of Fundamental Rights) and the continued pursuit of high-profile international cases such as the LRP Lama case, which have captured the attention of the authorities and international actors.

After the opening presentations, a discussion prompted by Chris’s questioning followed, which covered the following themes and subjects:

**Visibility of victims’ groups**: Chris questioned why victims weren’t being heard and what the NBI could have done differently to ensure that these voices were heard, especially considering that this was the primary mission of certain grantees included in the portfolio. Martin responded by elaborating that victims’ voices were indeed heard, but were not heard by the officialdom. Our efforts were actually quite successful in making noise and collectively raising the issue, particularly around the November 2013 elections and in the media, but these efforts failed at gaining recognition for the victims at the government level. In fact, in a sense, the victims’ voices were heard all too well, and eventually provoked a backlash against TJ and its international backers.

**Grantee success**: When asked to identify successful and unsuccessful grantees, Hari identified the strengths of two grassroots organizations located at the district level headed by dynamic leaders who collaborated cross-regionally and were also capable of attracting other donors. The organization identified as less successful, led by a female, was unable to make an impact cross-regionally and cultivate support. Hari attributed this to the cultural challenges faced by female leaders in the field of HR in Nepal, and the leader’s unwillingness to collaborate at the encouragement of the ASD with another female-led rights organization that had dealt effectively with these gender barriers.

**NBI strategizing post-2012:** Chris asked why the most recent backlash towards HR hadn’t been anticipated in light of the two major turning points in 2012 (the exit of the OHCHR and the stripping down of the NHCR). Martin responded that we had indeed seen this as a sign of growing – and calculated – hostility to human rights, but had misattributed the source of this hostility to the dominant political parties at the time. We underestimated and failed to realize the scope of the forces against HR, as attacks have persisted even after elections brought in a new balance of power. In response to this, we ramped up NBI’s emphasis on TJ and increased advocacy efforts both locally and internationally.

**Role of geopolitics**: Hari stated that in recognition of the current relevance of geopolitics, NBI has been trying to increase our advocacy efforts for TJ with India. But this has been difficult – the NBI has few contacts there and the ties between the Indian and Nepal army run deep. At a later point in the conversation, Binaifer also highlighted that our international advocacy targets should be diversified. Hari noted that the opportunity for TJ is shrinking as it has been de-prioritized in favor of securing a consensual namesake constitution.

**Constitution drafting process vs. transitional justice:** Chris then raised a central question, asking if the NBI should instead focus its efforts on the constitution drafting process and the incorporation of mechanisms for justice into the constitution, ensuring justice in the future, rather than on securing transitional justice? Martin agreed this was a compelling question, and that the NBI has considered focusing on a solid HR bill precisely because the constitution offers such a unique opportunity for influence. Binaifer then cautioned against making an oversimplified, two-sided argument out of the issue. She acknowledged the huge opportunity presented by the constitution, but emphasized that TJ could not simply be abandoned. Binaifer argued that impunity itself is carried out on two fronts (via institutionalization in a constitution and via neglect of past crimes) and therefore must be countered on these same two fronts. She also raised the issue of activist fatigue, urging OSF to recognize the demands this takes on individuals in positions of leadership who then burn out or leave the field. Chris later returned to the topic of dealing with present justice over seeking justice for crimes in the past, noting that this was the fundamental problem with the TRC in South Africa. In the South African context, transitional justice for past violations became a focal point of the media and elites, while meanwhile crime was soaring and there was no rule of law in the present. He questioned the Human Rights’ field’s fixation on punishment and its simplistic notion of criminal sanctions. Binaifer and Martin responded to this by emphasizing the need for both: if the past is unaddressed it comes back to interfere with justice and the rule of law in the present. TJ is not just a matter of the past, but very much the present as well – many perpetrators now find themselves in positions of influence and continue to impact adversely on current developments. TJ is a good defensive line against such actors. Binaifer then expressed the need for a multi-layered, nuanced, and agile strategy considering the inability to anticipate democratic movements.

**Grantee institutional structural development**: The conversation shifted to Mandira Sharma and the fate of the Advocacy Forum. Chris wondered why the success modelled by the resiliency of grassroots district-level grantees wasn’t replicated for larger, national-level grantees. Hari responded by noting that these organizations are small, and almost entirely funded by the ASD, so the accounting and their activities are easily managed and the ASD has a fair amount of leverage over their activities. Martin pointed out that by their small, local nature these grantees are less visible and not as exposed to attack as the larger organizations seated in Kathmandu. Martin emphasized organizations’ need for core funding because their reliance on project support leads to poor accounting practices, making them vulnerable to accusations of corruption and financial mismanagement. Chris warned against seeing core support as the solution to this predicament. He described that many OSF grantee organizations across the network use their flexible OSF funding on overhead costs, and not on daring, innovative projects, resulting again in donor-driven work.

**1/3 Threshold**: Chris described the larger rationale behind the 1/3 threshold and its flexibility – perhaps ASD’s grantee organizations will be an exception to this threshold for one, two, or three years, until they can transition to other funding sources. He highlighted the misconception of 1/3 as a ceiling, and reiterated that the 1/3 threshold should grow over time as the organizational budget itself grows.

**Linear strategy**: Chris stated that perhaps the lesson of our work in Nepal is to be less linear in our strategizing: there is no clear line in democratic movements from point A to point B. Binaifer described the need for a diffuse strategy – because you cannot attack impunity head-on, you must craft a balanced strategy, confronting impunity at the local and national levels. Chris responded by encouraging the continued pursuit of a multi-level strategy if we felt it was the right one. Chris noted that the ASD is a device designed precisely at enabling us to nurture local-level grantees. He commended the structure of the ASD, which he believes has allowed us to see more possibilities and opportunities than can even be seen at the national foundation level. He commended the ASD for its impressive ability to work at this level, and encouraged the NBI and the ASD to do visioning about what the network might look like in the next 5 years, and the next 10 years, and reflect on how this would affect the way our grant making in Nepal is conducted in the future. Chris also suggested that this lesson be applied to the development and future structure of the ASD itself.

Issues which emerged from the Portfolio Review discussion for further consideration:

* Diversification of TJ advocacy targets, with a particular focus on the neighboring countries of China (if at all possible) and India
* Increased attention to and advocacy for incorporating human rights into the constitution-drafting process
* Nurturing of local level grantees and graduating them to outside funding; helping the bigger national grantees to develop internal mechanisms and administrative capacity that would make them less vulnerable to attacks
* Crafting of a balanced, nuanced strategy that is less linear and remains adaptable and flexible to non-linear political developments
* Course of institutional development for and structuring of the ASD