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VICTIM-CENTERED APPROACH TO TRANSITIONAL JUSTICE

COUNTRY: Nepal

INTRODUCTION

A decade-long armed conflict in Nepal, from 1996 to 2006, concluded with the *Comprehensive Peace Agreement Between the Government of Nepal and the Communist Party of Nepal (Maoist)* in 2006.¹ The peace agreement from 2006 was supposed to ensure justice for victims of human rights violations during the war era through a high-level Truth and Reconciliation Commission (TRC).²

The transitional justice process in Nepal is formally guided by the mandate of the peace agreement from 2006 and the Supreme Court verdicts on various complaints submitted by the victims' families, particularly to investigate the enforced disappearances.³ Based on these formal steps and peaceful movements organized by the victims' networks, the government of Nepal passed an ordinance to form two transitional justice commissions in 2013. As a result, the TRC and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) were established in 2015.⁴

However, the victims of the civil war and the war crimes have not yet experienced justice despite the formation of the two commissions.⁵ The commissions were mandated "...to bring the facts out to the general public by making enquiry and investigation into the truth about the incidents of the gross violations of human rights and the crime against humanity in the course of the armed conflict and about those who were involved in those incidents, create an environment of sustainable peace and reconciliation by enhancing the spirit of mutual trust and tolerance upon bringing about reconciliation in the society, and to make recommendation

for legal action against those who were involved in grave offences relating to those incidents including for reparation to the victims of those incidents...”⁶

These two commissions, the CIEDP and the TRC, were only able to register the complaints of human rights violations. Within two years, by the end of July 2017, 2,874 complaints were registered with the CIEDP, and more than 58,052 complaints were registered with the TRC.⁷ However, these commissions could not proceed further on detailed inquiry and investigation, criminal prosecution, reconciliation, and reparation to the victims. The commissions jointly shared in a meeting with victims and the stakeholders that they lacked legislative resources to complete their mandate and recommended the amendment of the existing TRC legislation.⁸

Meanwhile, the victims were critical of the TRC legislation from the beginning, though they later registered their complaints. Victims and survivors criticized the formation of the commissions, realizing the legislation as a strategic instrument for amnesty and forced reconciliation. One of the victims during the interview to prepare this report said, “I will not accept the amnesty against extrajudicial killing. The same approach should be applied to other cases of serious violations of human rights, extrajudicial killings, enforced disappearances, serious torture, rape, and other sexual violence”.⁹

Similarly, the Supreme Court through its ruling discarded the legislation and placed criminal prosecution as a key component of transitional justice and passed a verdict to amend the TRC legislation on January 2, 2014, in the case *Suman Adhikari and Others v. Nepal Government, the Office of Prime Minister and Council of Ministers and Others to Supreme*.¹⁰

However, the government of Nepal formed the transitional justice commissions by violating the Supreme Court verdicts and proceeded with the same legislation even without criminalizing enforced disappearances.¹¹ The victims and survivors critically engaged with the transitional justice process and submitted their complaints to the commissions. Nevertheless, these cases did not proceed because of the incompetency of the TRC legislation and the commissions. Now prevailing, Nepal’s TRC act (the TRC legislation) is rejected by the victims, the Supreme Court, and international communities. Several attempts to amend the legislation failed because of overpoliticization.¹²

On the other hand, regarding the informal transitional justice mechanism, the victims and survivors themselves organized a massive campaign in Nepal to resolve war crimes through a holistic approach to transitional justice at the grassroots level. These victim-led campaigns have significantly educated the victims and survivors about transitional justice and their rights as victims. For example, NEFAD Nepal has developed a cooperative model/saving group at the district level to keep the victims and their families informed about the progress of the transitional justice process.¹³ NEFAD Nepal is a national representation of the victims and survivors of the decade-long armed conflict in Nepal. NEFAD Nepal has been supporting the victims and their families through community organization and evidence-based activism at

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In 2014, the International Coalition of Sites of Conscience (ICSC) launched the Global Initiative for Justice, Truth & Reconciliation (GIJTR), a consortium of nine international organizations focused on offering holistic, integrative, and multidisciplinary approaches to issues of truth, justice, and reconciliation. GIJTR works primarily with local populations, civil society organizations, survivors, and governments to develop transitional justice approaches that are victim-centered and collaborative and support dignity, respect, inclusion, and transparency in societies emerging from conflict or periods of authoritarian rule. Since its founding, GIJTR has engaged with people from 72 countries, worked with 681 civil society organizations, conducted 323 community-driven projects, and documented more than 5,040 human rights violations.

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the grassroots, regional, and national levels. Moreover, the network provides mutual support, advocacy, and relief to the families of the victims of enforced disappearance to ensure a victim-centered transitional justice mechanism in Nepal.

Similarly, another approach to community-based memorialization (CBM) is bringing the victims and survivors of the armed conflict together to share their stories. Victims and families are crafting memorial sites/monuments in local communities that symbolically keep their advocacy alive. CBM supports different pillars of transitional justice: truth seeking, evidence gathering, reparations, and intergenerational education.

The impact of these forms of informal transitional justice practices is limited. Informal and localized movements are helpful to organize the victims and survivors but cannot influence the transitional justice narratives built by the perpetrators (former police officers and members of the armies) and advocates with political interests who are based in Kathmandu.

The root causes, consequences, and postconflict struggles of the victims and the survivors of the armed conflict are not formally discussed and documented yet. These aspects have not been presented among the Nepalese society at large, while the overpoliticization of the transitional justice process has naturalized the war crimes in the local communities. It has stigmatized the victims and destroyed their dignity and that of their families.

BACKGROUND

OVERVIEW OF THE POLITICAL AND SOCIAL CONTEXT AND THE OUTBREAK OF THE CONFLICT

The preexisting social and economic gaps and ethnic marginalization of the people living in the country's rural areas were the primary reasons behind the social conflict in Nepal. Extreme poverty, feudalism, caste-based discrimination, and political exclusion of women, indigenous communities, Dalits, Muslims, and other minority groups were the escalating factors of the armed conflict in Nepal.¹⁴

The armed conflict escalated in Nepal when the radical left Marxist, called the Communist Party of Nepal (Maoist), launched its political campaign to unify these groups of people, and those campaigns highlighted the rights of these people. Poor services and the insignificant presence of government entities in rural communities were associated with structural factors like political exclusion, poverty, injustices, and abusive labor practices established by the local landlords.¹⁵ These social factors additionally benefited the communist party, which won the trust of many people from rural areas.

The promising agenda of good governance, freedom from slavery, educational reform, and the dream of a fair society drafted by the party motivated the rural youth, mostly from indigenous communities (Tharu, Magar, and Madhesi), to challenge the local feudal leaders through Maoist affiliation.¹⁶

Hence a conflict between tenant farmers and feudal landlords, and grievances against caste-based discrimination, unemployment, and poverty were integrated into the Maoist movement. This way, the People's Court and People's government established by the Maoist became an attractive alternative to secure justice for the people living away from the capital city.¹⁷

It gradually became an armed conflict when the Maoist Party declared the People's War in February 1996. It mobilized the youths, mostly from structurally marginalized and poor communities.¹⁸ It led to a situation of horrific political violence, in turn leading the state to armed conflict and hostility. Nepalese people faced massive killings, enforced disappearances, torture, sexual abuse, displacements, and other physical damages. The situation became more alarming when the government mobilized the army against the Maoist movement by declaring their act an act of terror.¹⁹ It disproportionately affected the youth, women, and so-called lower-caste ethnic groups, as they were heavily affiliated with the Maoist party.

State security forces were mobilized against the Maoist combatant, which targeted the indigenous communities from which the Maoist party cadres originated.²⁰ The families of these cadres were oppressed by the state and suffered highly. Various reports have documented that the armed conflict disproportionately affected the indigenous community because of the systematic oppression committed by security forces against them.²¹

STATUS OF VICTIMS IN THE TRANSITIONAL JUSTICE CONTEXT OF NEPAL

A vast number of extrajudicial killings characterized the decade-long armed conflict, including enforced disappearances of the people who had a political inclination toward the Maoist Party, physical and mental torture, extortions, displacement, sexual abuses, and destruction of physical properties. According to the record of the TRC and CIEDP, 63,000 complaints of war crimes have been registered. This record includes 17,886 deaths; more than 3,197 cases of enforced disappearances²²; 8,191 recorded cases of injuries; and thousands of other human rights violations, including rape, torture, extortions, and displacements.²³

Most of the armed-conflict victims belong to the economically marginalized fraction of Nepalese society, while poverty is one of the root causes of the armed conflict. The poverty of the victims of the armed conflict has become more serious and intense since they went through the war and have not received reparations.²⁴

The livelihood issues of the victims remain a significant concern in the transitional justice context of Nepal: "It is too late for justice? We are frustrated. I have heard that the government will be offering scholarships for children of conflict victims, but to whom are they offering it? I am 29 now, so the children of the victims now are adults; they are not at school anymore. We need jobs for now", one victim said.²⁵ Families of armed-conflict victims lost their livelihood after the loss of the breadwinner of the family and the ability to generate wealth. War victimization pushed them toward severe poverty.

The political violence against these groups had a psychological impact on them. It serves as a threat not to raise their voices against the ongoing impunity. The survivors of the armed conflict have been incapacitated to continue to fight for truth, justice, and reparation. The families of the activists in Nepal believe the state has been apathetic toward ensuring justice and derailed the process by weakening the victims.²⁶

Similarly, the psychosocial damage and emotional loss have alienated the victims of the armed conflicts from their communities, though they live in those same communities. Many victims are being tagged as criminals, and this narrative is normalized in their communities. It is challenging to rebuild a common narrative, which would involve victims and restore their dignity but would also involve the narratives of perpetrators of the armed conflict.²⁷ At the same time, victims are becoming more vulnerable to other forms of human rights violations, such as domestic violence, sexual harassments, and psychosocial traumas due to the lower social status, poverty, and lost dignity.²⁸

In this context, the participation of the victims of the armed conflict in the transitional justice process is the key to solving the multiple challenges they encountered during the conflict and continue to encounter in the postconflict context in trying to secure justice.

SUCCESSFUL TRANSITIONAL JUSTICE STRATEGIES

In Nepal, the victims' associations developed successful strategies to advocate for victims' needs at the national level. Victims' networks have prevented numerous attempts to pass transitional justice legislation that would have benefited the perpetrators and let those of serious human rights violations escape by employing blanket amnesty and forced reconciliation. Moreover, the victims' self-built association and the mutual support system that evolved within the victim association have kept transitional justice advocacy alive in Nepal.

The constitution of Nepal from 2015, promulgated by the Constituent Assembly and the federal governance system, has permitted the local governments to draft independent local governance policies.²⁹ It provides an opportunity to deliver localized transitional justice in the communities through the recognition of victims. CBM could be an effective tool for the local government to acknowledge war crimes and restore victims' social status by acknowledging their loss.

Despite the lack of resources and limited authority to ensure accountability for perpetrators, the local governments could play a vital role in the community reconciliation and social reintegration of the victims. The proposed attempts to recognize war crimes and victims at the local level would contribute to meeting the needs of the victims and restoring their dignity and local communities through education about the past. It would prevent the criminalization of the victims of the armed conflict.

Truth seeking is directly associated with the causes that led to the escalation of the armed conflict. In an interview, one Maoist ex-combatant shared, "It is truth, justice, reparation, identification of root causes of the conflict, and guarantee of nonoccurrence of the war in the future".³⁰

The victim communities are more concerned about the delay in identifying and addressing the root causes of the conflict and believe that conflict resolution is impossible unless the key causes of the armed conflict are addressed. Most victims perceive conflict as an era that took away their dignity.³¹ The status of the victims could be better understood and communicated within the communities if the root causes and the dynamics of the armed conflict are discussed and resolved locally. For example, many families of the persons who disappeared during the conflict migrated to other locations despite having livelihoods in their original villages.³² It illustrates that they have not overcome the guilt and grievances during the past decade and a half since the peace negotiation.

The psychosocial trauma of the armed conflict has a transgenerational impact on new generations who feel intense grief. The empirical examples suggest that some traumas of armed conflict are not healed over time but intensify, particularly when justice is compromised. One of the victims shared, “I am still scared to go outside during the nighttime, so I have been using the urine container at night since that day. I am scared of darkness.”³³

At the same time, victims are stigmatized. They feel that their experience is not socially accepted by their community. They believe society will not understand their grievance unless their identity is recognized. As one of the victims said, “I would feel better if my sufferings would be publicly recognized. I think the dedicated public space at the community level would restore the lost dignity of people like me.”³⁴ Communities should attempt to empathize with and accept victims as a part of the community.

Despite these challenges, the victims’ communities are collaborating with the local municipalities and civil society organizations (CSOs) who are genuinely seeking an opportunity to establish the personal and social truth about human rights violations and work on memorialization. The victims actively participate in local memorialization activities. They are looking for opportunities to engage in philanthropic activities in their local community in order to reconnect to their dislocated neighborhood.

CONCLUSION AND RECOMMENDATIONS

The victim-led and peaceful movements in the postconflict era of Nepal resulted in a separate transitional justice mechanism in the country. However, the victims were sidelined during the drafting of the transitional justice legislation, so they perceived that exclusionary approach as a strategy for derailing justice. Although the official registrations of the complaints in the transitional justice commissions have strengthened the victims’ movement to address the violence against them through a constitutional body, very few of the victims have expectations from the existing transitional justice mechanism. This is a

consequence of lacking confidence in the mainstream political leadership, the prevailing transitional justice legislation, and the integrity and competence of the commissions formed.

Nevertheless, there have still been developments within the transitional justice context in Nepal that have raised hope and provided lessons worth sharing:

1. Building victim associations and mobilizing families of victims in advocacy campaigns were successful in building CSOs' solidarity.
2. A focus on recognizing the needs of the victims can promote social cohesion and prevent the alienation of victims in a postconflict context. It could be achieved by organizing the victims, demanding accountability, and gaining the empathy of local actors.
3. CBM, from Nepal's experience, is one of the realistic means of ensuring victims' recognition as a reparation through local efforts. It simultaneously supports advocacy and drives the conflict transformation in a victim-centered manner.
4. CBM has built a safe space for the victims against other risks of human rights violations. CBM is cautious about victimization, as it is locally done where local actors are familiar with the local context, culture, and the gravity of the issues, unlike the externally designed and introduced psychosocial healing interventions.
5. The stakeholders engaged in transitional justice advocacy in Nepal have different interests and political objectives, and these interests are not well communicated among these actors. It raises the threat of uneven participation of stakeholders in transitional justice.
6. Some of the local governments in Nepal are proactively working to acknowledge the victims of the armed conflict through local memorialization. However, these initiatives have yet to be replicated in other communities.
7. The participation of victims in the local elections has amplified their voices at a higher level of the government and political leadership.
8. The poor participation of the victims in the transitional justice process could be addressed by building the trust between transitional justice commissions and victims' communities through the amendment of the transitional justice legislation and victim-centered approaches of the commissions.

ENDNOTES

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- 5 Two transitional justice commissions in Nepal were established in 2015 to deal with human rights violations during the conflict era.
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- 9 KII, 46, male, son of a person killed by Maoist cadre, August 19, 2022.
- 10 *Study Report on Execution Status of Supreme Court and Appellate Court Orders/Judgments relating to Transitional Justice 2016*, National Judicial Academy Nepal, December 2016, read more: <https://www.njanepal.org.np/public/reports/21021154913-TJ%20-%20report%202016.pdf>, (last accessed: April 12, 2023).
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- 17 Paudel, D. (2016). *Ethnic Identity Politics in Nepal: Liberation from, or Restoration of, Elite Interests?*, Asian Ethnicity, 1-18, read more: <https://www.tandfonline.com/doi/abs/10.1080/14631369.2016.1179567?journalCode=caet20>, (last accessed: March 7, 2023).
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