

**TRANSITIONAL JUSTICE PROCESS AND THE NARRATIVES
OF THE VICTIMS OF ENFORCED DISAPPEARANCE IN
NEPAL**

A Dissertation

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LETTER OF RECOMMENDATION

DECLARATION

I hereby declare that this dissertation is my own work, and it contains no material previously published. I have not used its material for the award of any kind of any other degree. Where the other authors' sources and information have been used, they have been acknowledged.

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Anuja Sapkota

Date: December 2023

ABBREVIATIONS AND ACRONYMS

CIEDP	:	Commission of Investigation of Enforced Disappeared Persons
CVCP	:	Conflict Victims Common Platform
DDC	:	District Development Committee
ICTJ	:	International Center for Transitional Justice
ICRC	:	International Committee of the Red Cross
IHL	:	International Humanitarian Law
IHRC	:	Harvard Law School International Human Rights Clinic
INSEC	:	Informal Sector Service Center
IC	:	Interim Constitution
IRP	:	Interim Relief Program
LPC	:	Local Peace Committee
MoPR	:	Ministry of Peace and Reconstruction
NEFAD	:	National Network of Families of Enforced Disappeared or Missing Nepal
NGO	:	Non-governmental organization
NHRC	:	National Human Rights Commission
NP	:	Nepal Police
OHCHR	:	Human Rights Office of the High Commissioner
RNA	:	Royal Nepalese Army
SC	:	Supreme Court

- TRC : Truth and Reconciliation Commission
- UN- WGEID : United Nations Working Group on Enforced and Involuntary
Disappearance
- VDC : Village Development Committee

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ABSTRACT

The ten-year-long armed conflict between the Communist Party of Nepal-Maoist and the Government of Nepal ceased on November 21st, 2006, after the underwriting of 'The Comprehensive Peace Agreement.'. The agreement emphasized the importance of establishing a transitional justice system within six months to provide an opportunity to address the grievances of those affected by more than ten years of armed conflict. The 'Truth and Reconciliation Commission (TRC)' and the 'Commission on the Investigation of Disappeared Persons (CIEDP),' were established in August 2015 to help with the transitional justice process. Within six years of establishment of the two commissions, 60,000 TRC cases and 3,093 CIEDP cases were registered.

In most of the peace agreements that formalized the transitional justice process, like the Comprehensive Peace Agreement in 2006 and the Interim Constitution in 2008, the parties to the conflict have made a commitment to address the needs of the conflict's victims. Currently, however, the entire Transitional Justice process in Nepal, is being criticized as being too top-down and state-driven, which raises the question of whether it will adopt a bottom-up approach in addressing the past to construct a more peaceful future or top-down approach as a tool to just get the peace process off the table.

This research is an attempt to explore and capture the approaches of transitional justice in Nepal and the lived narratives of the families of disappeared persons in Nepal. The chapters in this thesis discuss the global to local approach of transitional justice approach through primary and secondary data collected for the research. Research adopted the qualitative approach with triangulation of interview, group discussion and narratives. The live narratives of the families of enforced disappeared persons are the focus of the study. Through the narratives, the research tries to bring out the struggle of

the families, their need, the lack of trust towards the government and how important it is for them to deal with the past to create a sense of peace within themselves. The conceptual framework of this research focuses on the – ‘Dealing with the Past’ framework that encompasses four major elements: Right to Truth, Right to Justice, Right to Reparation and the Guarantee of Non-Recurrence, and its importance in dealing with the past after the atrocities or violent past to build a peaceful future.

The families of enforced disappeared persons in Nepal are still in search of truth and justice from the concerned authorities and want the government to be accountable to deal with their problem with respect and sensitivity. They want transitional justice to be the utmost priority of the government without further delay.

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CHAPTER 1: INTRODUCTION

In this chapter, the researcher has outlined the topic of the research and laid out the fundamental framework for the research. This chapter links the subject matter of the research to the other essential components of the research and contains research problems that elucidate the rationale for the research. In addition, it also contains research questions and their specific goals. It goes on to explain the reason and the importance of the study, and how it will be implemented providing the structure for the chapter.

1.1 Background

Transitional justice (TJ) has emerged astronomically over the past three decades to become one of the prominent international research areas on how to respond to serious violations of human rights in post-war and post-authoritarian societies. TJ used to be seen as something out of the ordinary after the war, but now it's become a normal part of society (Teitel, 2003, p. 69). It is widely accepted that no lasting peace can be achieved without addressing the legacy of mass atrocities in societies, and TJ is well-positioned to make a significant impact in addressing those past grievances (Bell, 2008, p. 23; Nagy, 2008, p. 277). Advocates of the discourse assert that TJ offers additional benefits of promoting reconciliation and human rights and establishing rule of law, peace, and democracy in transitioning countries (McEvoy & McGregor, 2008; Thoms, Ron, & Paris, 2010, p. 321). According to Boraine (2006), TJ provides a more comprehensive and inclusive approach to justice that seeks to confront offenders, address the grievances of victims, and initiate a process of healing and change (p. 18).

Understood in practical terms, international tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993, and International

Criminal Tribunal for Rwanda (ICTR), established in 1995, are two examples of tribunals that the field has witnessed. The other examples include the ‘hybrid’ courts or tribunals comprised of local and international justice institutions such as those in Sierra Leone, Bosnia, and Cambodia, as well as the establishment of the International Criminal Court in The Hague in 2002 through the agreement of its Rome Statute (Bernath, 2016; Bonacker, Form, & Pfeiffer, 2011; Miller, 2008, p. 266; Paige, 2009, p. 321). It has also led to the emergence of non-institutional commissions of inquiry, such as the National Truth and Reconciliation Councils in South Africa, East Timor, and Liberia, as well as numerous international and regional non-governmental organizations (NGOs), dedicated journals and conferences, and academic programs and research centers (Nagy, 2008, p. 275; Sharp, 2013, p. 150).

Although the discourse has become a well-known and accepted part of the broader justice & human rights community, it remains one of the most contested fields and one that has continued to evolve by grappling with its conceptual inadequacies, which it inherits from the liberal, human rights paradigm. One of its main contestations is that the discourse privileges is mostly designed outside of where the conflict takes place making it a completely unrelated to the needs of victims (Arbour, 2007; Gready & Robins, 2014; McEvoy & McGregor, 2008; Nagy, 2008) and in doing so, fails to recognize structural inequalities and socio-economic injustices (Leebaw, 2008; McEvoy & McGregor, 2008) and discourages participatory-oriented approaches grounded in local cultures and contexts (Nagy, 2008; Sharp, 2013). All these critiques that point towards the discourse’s problematic foundations will be discussed in detail in Chapter 2.

1.2 Statement of the Problem

The issue of enforced disappearance is one of the complex issues in the transitional

justice process of Nepal. It is one of the unresolved issues even after 17 years of signing of the peace accord in 2006. More than 3000 cases of enforced disappearance have been registered at CIEDP.

The prolonged period of armed conflict in Nepal between 1996 and 2006 has resulted in an estimated 15,000 death (Informal Sector Service Centre [INSEC], 2007) and over 1,300 disappearances (International Committee of the Red Cross [ICRC], 2009). The consequence of the conflict resulted in deaths, displacements, and disappearance of people. Among them, the issue of enforced disappearance is one of the complex issues. The desolation it created has wider impact to their close ones till unknown timeframe. There has not been a lot of research done on enforced disappearances and their effects in Nepal. The present literature is more focused on the universalistic, western centric, state centric top-down approach of transitional justice and lacks the local context and real lived narratives and experiences of the victims.

This is why the present research tries to explore the TJ process, its approaches and how it interacts with the victims of armed conflict. It tries to bring out the real shared experiences of the victims and how they have experienced the TJ process.

1.3 Research Questions

This research tries to study the unsettled issue of armed conflict in Nepal especially concerning the victims of enforced disappearance. The following research questions try to explore in the given topic:

- 1) What do victims understand by TJ process in Nepal?
- 2) What are the narratives of the victims of enforced disappearance during the insurgency in Nepal?
- 3) How is the TJ approach of Nepal victims centric?

This research is thus a systematic study of the state of the TJ process of Nepal. This research promotes knowledge of the TJ process by investigating a body of rich ethnographic material collected from field research.

1.4 Research Objectives

In the current academic scenario of Nepal, very few research have been carried out relating to the TJ process in Nepal and how it addresses the victims of armed conflict, especially those of enforced disappearance during insurgency period of Nepal. International human rights organizations have carried out some research in this field while academic research seems to lack relating to the families of the disappeared persons. The primary objective of this research is to revisit some of the conceptualizations in the dominant TJ discourse and question it because without such interventions, these conversations does not allow to discern the victim's perspective in order to understand the effect of TJ.

The normative framework of the TJ discourse, therefore, is increasingly getting contested, where many TJ approaches have failed to deliver an acceptable and meaningful form of justice for the victims of a crime and survivors of mass atrocities. Scholars argue that by privileges of the legalistic perspective, the discourse offers a narrow view of justice that focuses exclusively on liability for ignoring civil and political rights. In turn, it excludes discussions on historical and recurring socio-economic inequalities and structural violence, which remain at the root of many violent conflicts. The field is equally critiqued for being 'top-down', it being seen as hostage to an entirely state-centric and elite-led paradigm where building and re-constructing state justice mechanisms takes precedence over participatory-oriented and victim-centric approaches to justice.

The research objectives are mentioned as below:

- 1) To identify the victims' understanding of the TJ process of Nepal,
- 2) To analyse the narratives of the victims of enforced disappearance in Nepal,
and
- 3) To analyse if TJ approaches of Nepal is a victim-centric approach.

1.5 Rationale and Significance of the Study

The insurgency in Nepal, between 1996 and 2006, was born out of deep-rooted social and economic disparities, and poverty in addition to dissatisfaction with a socially and politically exclusionary system, as well as persistent ethnic, caste, and gender inequalities. While an exclusionary society emerging from conflict must seek to address marginalization, a reflection on the evolving Nepali political and TJ processes demonstrate that they do not explicitly incorporate emancipatory approaches to include those most vulnerable and excluded.

This is why the present research tries to explore the TJ process, its approaches and how it interacts with the victims of armed conflict. It tries to bring out the real shared experiences of the victims and how they have experienced the TJ process.

The prolonged period of armed conflict in Nepal between 1996 and 2006 has resulted in an estimated 15,000 death (Informal Sector Service Centre [INSEC], 2007) and over 1,300 disappearances (International Committee of the Red Cross [ICRC], 2009). The consequence of the conflict resulted in deaths, displacements, and disappearance of people. Among them, the issue of enforced disappearance is one of the complex issues. The desolation it created has wider impact to their close ones till unknown timeframe. There has not been a lot of research done on enforced disappearances and their effects in Nepal.

1.6 Operational Definition

For this entire research to be precise, the below mentioned key words are defined as:

- a) **Armed Conflict in Nepal:** The period of armed struggle from 1996 to 2006 in Nepal.
- b) **Enforcedly Disappeared Persons or Missing:** Those who were forcefully abducted during 1996-to-2006-armed conflict bypassing legal mechanism by both parties (state and the then rebellion) and those of whose status is unknown till now.
- c) **Families of Disappeared Persons:** Immediate family members of those who were disappeared during the armed conflict in Nepal.
- d) **Transitional Justice:** The concept of transitional justice is concerned with the manner in which societies respond to the consequences of extensive and grave human rights violations. In the context of Nepal, it came to attend to the human rights violations after a decade long (1996-2006) armed conflict in Nepal.
- e) **Transitional Justice Process:** Transitional justice constitutes procedures and system that promote truth, justice, compensation, and an assurance that it does not happen again.

1.7 Delimitations of the Study

This research is carried out among the families of missing and not every type of victims of civil unrest in Nepal. There are various types of victims of civil war of Nepal like torture, rape, dead, injured, displaced, disappeared. This research is only focused on one of the categories of victims. Researcher focused on the victims of enforced disappearance as it is an open-ended question of abuses and violations of human rights.

The other limitation of this study is that it is carried out in a limited geographical

location in Nepal. Four districts namely Bardiya, Chitwan, Kailali and Kathmandu are selected as the research site. These districts are selected because of highest number of enforced disappearances according to the provincial data of CIEDP in 2019.

One of the last limitations of this research is the limited time frame. This research covers the victims of armed conflict (1996-2006) and their lived experience until 2023. Primary data collection was done from 2015-2019. Secondary data is included up to the year 2023.

1.8 Organization of the Study

The research is organized in seven chapters. The structure of the first three chapters is based on the format of Tribhuvan University, while the other four chapters are structured as per the requirements of the research data that needs to be studied to elucidate the structure of the data.

Chapter 1 outlines the topic of the research and lays out the fundamental framework for the research. It links the subject matter of the research to the other essential components of the research and contains research problems that elucidate the rationale for the research. In addition, it also contains research questions and their specific goals. It goes on to explain the reason and the importance of the study, and how it will be implemented providing the structure for the chapter. Chapter 2 focuses on the review of various literatures. This was achieved by aggregating comparable literature and then analyzing and elucidating them. The researcher has attempted to acquire as much data as feasible in order to help facilitate tracking of essential data necessary for conducting the research. The researcher also looked at some peer-reviewed literature in support of the methodological issues encountered during the study. This was done by dividing the entire section into distinct subheadings. Chapter 3 addresses methodological concerns, providing information on the research design, the research environment, and the sample

selection, the sampling methods, the data analysis steps, the robustness and validity of the study, the ethical implications of the study, and the limitations of the study. This chapter outlines the rationale for the adoption of research tools and the reasons why they are essential for the researcher to conduct specific analyses. Chapter 4, Chapter 5, and Chapter 6 are the analyses of the findings that were assembled according to the requirements of the research which is appropriately in line with the questions and objectives of the research. These chapters are broken down into smaller sections in order to facilitate the logical progression of the explanation, and to make it relatively easy to explain in connection with other sub-topics. Chapter 7 is the final chapter in which the summary of the entire research is presented. This chapter also provides a potential future research project idea that can be conducted in a different area of the community and was not included in this research as well as the conclusion of the research.

CHAPTER 2: REVIEW OF THE LITERATURE

In this chapter, the researcher has discussed the review of various literatures related to transitional justice. This was achieved by aggregating comparable literature and then analyzing and elucidating them. The researcher has attempted to acquire as much data as feasible in order to help facilitate tracking of essential data necessary for conducting the research. The researcher also looked at some peer-reviewed literature in support of the methodological issues encountered during the study. All of these have been discussed in greater detail in this chapter.

2.1 Global View of Transitional Justice

There is a wide range of interpretations of Transitional Justice (TJ), as it has been interpreted and interpreted differently depending on the perspective with which it gets viewed. Over the years, the conception has undergone a transition from a restrictive approach to a more open-minded description of what can be anticipated from the discussion. The term ‘transitional justice’ was coined by Teitel (2003) who basically interpreted it as a way of thinking about how justice should be delivered during times of political transition, and the legal action should be taken to address the wrongdoings of the repressive past governments. (p. 69). Her interpretation, which evaluates the role of law enforcement and criminal prosecution in addressing human rights violations in the past, encourages a very narrow conceptualization of the scholarship (Arbour, 2007; McEvoy & McGregor, 2008). This definition neglects the fact that legal systems of societies that have emerged from war and repressive regimes, which are already struggling with scarce resources, political upheaval, and years of violence, may be weak and not necessarily equipped to take on such huge responsibilities.

Roht-Arriaza (2006) broadens the scope of transitional justice as a combination of ideas

and procedures that emerge after an insurgency and conflict, or repression, and that are focused on addressing and remedying the past grievances (p. 2). She argues that the restrictive understanding of TJ places higher emphasis on political rights rather than socio-economic rights and in the process, fails to address the underlying cause of violence and the genuine needs of victims of violence (Roht-Arriaza, 2006, p. 2). According to the former UN Secretary-General Kofi Annan's report of 2004, TJ encompasses the entirety of the processes and systems that a society utilizes to address the consequences of violences, to guarantee accountability, provide justice, and foster reconciliation. These may involve both legal and non-legal means, with varying degrees of foreign involvement (or none), as well as individual prosecution, restitution, truth-finding, institutional reform, screening, and dismissal, or a combination thereof (UN Secretary-General, 2004, p. 8).

Although the definitions above may have varied in their articulation of TJ, they were essentially understood to elucidate the ethical, legal, and policy implications in a manner that societies addressed past human rights violations. Bell (2009) argues that the concept of 'dealing with the past' imbibes two salient features – 'undoing the past' and 'accounting for the past,' although she questions if it is essential, beneficial, or even feasible to achieve such a state of closure (p. 8).

Mani's (2002) definition of TJ may be the most expansive, as she states that, due to the interdependent nature of peacebuilding and justice, TJ should strive for a comprehensive approach by integrating the three dimensions of law, rectification, and distribution (pp. 5-11). The first focuses on putting in place a rule of law, while the second deals with direct human rights violations perpetrated against individuals. The third seeks to address the structural and systemic inequalities that result from political and economic exclusion and the unequal distribution of resources (Galtung, 1969, p.

167; Lundy & McGovern, 2008, p. 274).

Mani's (2002) broad definition of TJ is important for broadening the conversation, but it comes with its own set of challenges. One important question is whether TJ mechanisms, already burdened with wide-ranging mandates, high public expectations, and limited budgets, can effectively address structural violence and socio-economic rights issues within their scope.

Sharp coined the term "the fourth generation of transitional justice" inspired by Teitel's three-stage genealogy of TJ (as discussed below) which focuses to strive for a relatively accurate representation of the interplay of TJ, the concept of the local, and the concept of economic justice (Sharp, 2013, p. 153). This explanation suggests that even though the conversation has progressed significantly over time, the dominant view on TJ is still restrictive emphasizing on physical violations over structural, economic and gender violence. Furthermore, there is a tendency of privileged legal responses to secure individual justice, which is a very western-centric concept that ignores the socio-cultural dynamics and distributional inequalities that underlie conflicts in poorer countries. The combination of these trends has a strong impact on the understanding of violence, the concept of victimization and the concept of perpetration, thus distorting the process of truth, fairness, and reconciliation. (Nagy, 2008, p. 277).

Now with respect to the TJ genealogy, Teitel (2003) suggests a 3-phase division for analyzing the historical progression of the discourse. The first stage of the war began almost right after the end of the second World War in 1945, when the allies founded the Nuremberg Military Tribunals to try Nazi leaders for war crimes (Teitel, 2003, p. 70). Following a period of inactivity, the second stage of the post-Cold War era began when the Soviet Union dissolved and democracies emerged from repressive regimes in Latin American and Eastern European societies (Teitel, 2003, p. 71). By the late

twentieth century, transitional justice had achieved a third stage of development, transforming from the status quo to the rule of law (Teitel, 2003, p. 71).

The first stage of TJ focused predominantly on the establishment of International War Crimes Tribunals, specifically the Nuremberg trials and included ‘back-of-the-envelope’ approach of applying human rights laws and standards to past behavior (Sharp, 2013, p. 154). Stage two, however, was marked by prosecution at the national level in countries that had emerged from oppressive regimes and were on the path to democratic political transformation. The most significant part in this phase was the discussions on ‘peace vs. justice’ and ‘truth vs. justice’, which dealt with the conflict between moral, political, and legal issues in transitioning societies (Bell, 2009, p. 321; Leebaw, 2008, p. 91; Paige, 2009, p. 85).

The Peace versus Justice debate focused on the question of reconciling conflicting moral imperatives, reconciling the legitimate aspirations for justice with the equally legitimate aspirations for stability and social tranquility during periods of transformation (Paige, 2009, p. 323). As a scholarship, TJ was in a contradictory position because on one hand, it sought to create a sense of normality in post-regime states and on the other hand, it uncovered the mass atrocities of the past (Nagy, 2008; Teitel, 2003). The discourse, for this reason, often was accused of ‘opening up old wounds, creating political instability and obstructing progressive political development’ (Leebaw, 2008, p. 96). A pertinent moral question was, “should we punish people for their past acts of violence?” Or “amnesties are necessary in fragile societies to keep peace?” These moral conundrums were even more difficult to deal with in practice. In countries such as Argentina and Chile that emerged from military rule in the 1980’s and 1990’s, former rebellions were offered amnesty. During this process of democratization led by the elite, this was seen reasonable for establishing

peace, since the trials as well as prosecutions of army officers had caused serious turbulence in those states.

The Truth versus Justice discussion highlighted the complexity of reconciling the demands of law, retribution, and rehabilitation in a period of transformation (Paige, 2009, p. 353). This raised the question "How can retributive justice be reconciled with other forms of non-judicial accountability?" Consequently, commissions on truth were initially thought of as an essential element of TJ, as they could potentially uncover the truth and counteract the denial culture in the short term, while also contributing to the reconciliation process in the long term (Fischer, 2011, p. 410). However, they were also viewed as a tool that enabled the offender to evade punishment and gave 'political backing' to amnesties (Thoms et al., 2010, p. 343). As a result, primary focus of these discussions emphasized on contrasting Truth, Peace and Justice and viewed them as difficulties as well as compromises associated with the pursuit of justice during a transitional time, while struggling to explain the reasons for these structures to be viewed as complementary and mutually reinforcing. Now, the final stage of TJ marked the elaboration and normalization of the discourse, repositioning its concept from something of "exception" to "standard" (Teitel, 2003, p. 71). It transitioned from its peripheral context to become mainstream in a post-war landscape in which the question of TJ has increasingly shifted to the question of if it should be implemented and not if it was needed. (Nagy, 2008). An argument can be made that such assertion can be problematic because the fundamental questions like 'who' and 'what' is 'transitional justice for?' are no longer considered applicable, rather the TJ interventions are accepted as normal and necessary (Nagy, 2008; Sharp, 2013). Ultimately, the TJ might question, how else would we deal with the past injustices without the use of TJ procedures?

To examine some of the pertinent challenges and potentialities within the TJ discourse that relate to the research question, this chapter on literature review has been subdivided into multiple sections. After the first section that provides various definitions and genealogy of TJ, the second section examines some of the fundamental issues that it draws upon from the theoretical foundations of liberalism – notably its fundamental principles of human rights, democratization, and economic liberalization. The third section analyzes how the traditionalist notion of TJ is conceptualized in terms of individualism, universalism, legalism, and elitism, thus perpetuating problematic narratives of victimization and agency that ignore local dynamics in times of transition. The fourth section seeks to examine some of the recent contributions made towards challenging the existing limitations of the discourse and explore whether such efforts have the potential to pave way for a more holistic and integrated approach to TJ. It assesses emerging discussions around increasing the emphasis on socio-economic rights, articulating nuanced understanding on victimhood, and imagining spaces for victim agency amongst other pertinent issues. The last section of the chapter summarizes the key discussions that are linked with the research project.

2.2 A ‘Western’ Concept

Transitional justice faces several challenges due to its conceptual and historic origins in the Western world. Other than a few Latin American scholars at the Aspen Institute meeting or Salzburg Conference at the end of the 1980s, most of the participants were white Europeans and Americans in some of the seminal events that helped shape the discourse (Paige, 2009). What was largely missing from these early conversations were the perspectives of the communities that TJ was trying to reach, often with radically different norms and beliefs on the notion of justice and reckoning with the past. Not much seems to have changed in today’s context, where the western models of TJ

continue to being applied to non-western contexts. In fact, Orford's (2003) work on East Timor talks about how the post-colonial state is conceptualized as a "new state" as far as the historical understanding and circumstances are concerned, with a culture of cronyism, inefficiency, and corruption prevalent with the people depicted as deprived of a unified state, ethical values, abilities, and a commitment to human rights (p. 139).

In the local context of Nepal, it has not been able to come up with its own idea of local way of dealing with the past. Even after 16 years of peace agreement in place, the TJ process is still delayed and lacks the ability to hear the voices and needs of the victims and make the process all inclusive. Victims' associations and groups are continuously protesting, lobbying, and organizing a movement to pressure the government to focus on the victim centric TJ approach.

At this stage, it may be beneficial for the Government to recognize the complexity of the social and political environment in which violations occurred during the armed conflict in Nepal, and the lasting effects of these violations on the daily lives of Nepali people, rather than simply extrapolating from the experiences of other emerging societies such as Colombia. The causes of these inequities were not only rooted in the events of the conflict, but also in the legacy of historical inequalities and institutionalized marginalization. The particularities of the victims' lives, seen through the lens of their subaltern cultures and local contexts, must not be eliminated under the rubric of a 'one-size-fits-all' model of justice or in the pursuit of Western-style models of justice for the sole purpose of serving donor interests. If left unresolved, this lack of contextual knowledge can lead to frustration and conflict among victims and the state, social isolation, and the risk of future violence.

Many victims in post-conflict societies seeking justice may feel excluded from such an externalized system of justice. This is because not only is the concept predominantly a

western construct, TJ also arguably struggles to acknowledge and incorporate local knowledge, perspectives, and preferences of those seeking justice. Additionally, such theoretical underpinnings have usually been modeled around relatively stable democracies and may not necessarily be relevant to poor, developing countries with weaker institutions. More so, these transitioning societies may have very different socio-political landscapes and understanding of justice than what is being proposed by the discourse.

As discussed in the previous section, what is even more problematic is how TJ is proposed and constructed by adopting the normative framework of human rights and humanitarian legalism which refers to the notion of 'individualism' as supported by the rights-based, human rights discourse. The notion of rights as a law ensuring that one can take legal action against someone for something they did and that that it is a common practice (Viaene & Brems, 2010, p. 203) is a highly western construct. Transitional justice takes this even a step forward by defining perpetrator's crime and victim's agency both as an individual act or individual responsibility. Too much emphasis on holding someone responsible for the crime they have committed removes the context or structure that could have made the atrocities occur, to begin with. (Baines, 2009; 2015; McEvoy & McGregor, 2008). Ramji-Nogales (2010) states that the concept of "individual responsibility" has a major disadvantage when used in transitional contexts, as the violations and brutalities committed in those communities are typically a collective behavior including a wide range of groups. By emphasizing on placing blame on those that are responsible for the gross violations, the human rights perspective of TJ overlooks the nature of those who witnessed the crimes but did nothing to prevent or even profited from them" (Ramji-Nogales, 2010, p. 9). Leebaw (2008) further notes that TJ by 'individualizing guilt' (p. 104) can potentially 'reduce

feelings of vengeance, racial profiling, and promote respect for the legal system' (p. 110), but in doing so it is easy to overlook the fact that communities are complicit in the perpetuation of political violence.

During the literature review, it was noted that another major drawback that 'individualism' brought to the foreground was that it constructed victim's agency through a narrow, individualistic lens. This posed a hindrance for victims living in communities and articulating their agency through collective processes. Unsurprisingly, this perspective of TJ also sidelined collective responsibility that a society has towards victim and perpetrator in the broader structural contexts. Regrettably, the current literature on TJ does not sufficiently address the difficulties associated with the implementation of the individualistic approach to justice in communities characterized by strong communal values.

2.3 Legalistic Lens

Transitional justice has a highly legalized and rights-oriented perspective, which is in line with the liberal principles of human rights. In fact, legally oriented academics focus on creating practices that promote global standards (Vinjamuri & Snyder, 2004, p. 347) for reducing atrocities. The emphasis is thus placed on the civil and political rights of individuals, the physical manifestations of violence, and the role of the legal system in bringing those responsible to account (Posner & Vermeule, 2004; Teitel, 2003). By emphasizing the legalist perspective, the discourse provides a very limited view of justice that overestimates the power of law to help communities confront their violent past (Leebaw, 2008; McEvoy & McGregor, 2008; Sharp, 2013). It is disturbing to note that while the law can be used to regulate violence and reveal the misuse of power, it can also be used to conceal and legitimize the abuse of power (Leebaw, 2008, p. 95). The field of discourse has traditionally been dominated by legal practitioners and the

judicial system, where the opinions of, for instance, political scientists or anthropologists are often disregarded (Bell, Campbell, & Aoláin, 2007, p. 86). This monopolization encourages an elitist culture where legal professionals and politicians turn into the gatekeepers and promoters of facts and information, and any hint of disagreement is likely to be silenced. More so, these elites marginalize the voices of the victims and survivors of violence by speaking 'about' and 'for' them (Madlingozi, 2010, p. 208).

Generally speaking, the legalist answer to the question 'for whom is transitional justice?' is that people responsible for the cruelest violations of human rights are made accountable. At a first glance, it might make logical sense to accept this as one of the main objectives of TJ. But in doing so, what may not get appropriately addressed is the complicated nature of victims' needs that get overlooked by placing focus only on holding perpetrators accountable. (McEvoy & McGregor, 2008, p. 42). By emphasizing on prosecuting the perpetrators, the narrow lens of TJ perhaps fails to resonate with the experiences and expectations of those seeking justice in post-conflict environments.

In a similar manner, by focusing on political and civil violations, TJ brings to the forefront the other preconception it inherits from human rights (Miller, 2008; Roth, 2004). The majority of its work focuses on 'physical violence' and refrains from discussing economic, social, and cultural justice in transitioning societies. This kind of ignorance is just a sign of the deeper issues within the field of research about how to keep the bigger structural reasons behind violence in the background (Arbour, 2007; Laplante, 2008; Miller, 2008). Transitional justice, according to Robins (2015), has tried to hold politically responsible parties accountable for violence, but lacks to do so for the economic elites who drive the systemic violence that has sustained chronic violations of social and economic rights (p. 186).

In the context of Nepal, 'the law' comes before the 'victims'. Instead of providing a broader definition of justice, the legal framework appears to favor a narrow view of justice that may be more focused on the perpetrator than the victim and ignores the diverse needs of the victims and their claims for justice that extend beyond the armed conflict to include economic, social, and cultural justice. The law also disregards the accountability of a society which is characterized by intricate social relations and power structures that shape the experiences of victimization. It also ignores the responsibility of the country's governing bodies, such as the State Security Forces and political parties, which have largely politicized the transition justice program and employed it as a lever to manipulate one another to further their own interests.

To sum up, law has played a significant role in creating and maintaining the traditionalist model of transitional justice (McEvoy & McGregor, 2008). What was found during the literature review was that the substantive research on TJ to be legalistic in nature, which perhaps helps maintain the "status quo" and the "monopoly" of the discussion. The scholarship's key terms have been thrown around a lot over the years, and different terms have been used to mean different things, but maybe all of this was just to make the legal case of transitional justice. Bourdieu (1986) accurately expresses the notion that the legal realm has a powerful, almost mysterious influence on socio-economic and political status as they are significantly impacted by the legal world or 'juridical field' (p. 805). The debate over whether to endorse or reject the legalistic methods of achieving justice has often been drowned out by more relevant inquiries into the genuine needs of those seeking to recover from the effects of violence.

In the meanwhile, any strong critique on the massive influence of law in TJ has either been disregarded or typically assimilated into or co-opted by the mainstream discourse. There has also been a growing number of dissident voices, such as those expressed by

McEvoy and McGregor (2008), Robins (2015), and Sharp (2013) as they constantly challenged the influence of legalistic lens in postulating TJ. While they have managed to offer some alternative conceptualization on justice like the concept of transformative justice (discussed in the next section), these perspectives haven't had concrete theoretical or practical accomplishments on the ground yet. Some of these new and emerging perspectives will be discussed in the next section. McEvoy and McGregor (2008) suggest that a more comprehensive interpretation of TJ should be developed, recognizing the limits of its legalist origins, particularly because there is a deviation of the actual reality in some transition justice systems from the legal issues that dominates political discourse among political elites (p. 23). At the very least, there must be an understanding that a focus on the normativity of the law may privilege elite perspectives and obscure critical issues affecting marginalized communities (Bell, Campbell, & Aoláin, 2004, p. 314).

In Nepal, while there appears to be a consensus on the importance of the bill, there is a need to gain a more profound comprehension of how the international legal-centric TJ discourse is shaping our national narrative, in order to ensure that the ongoing proceedings can provide a form of justice which resonates with the conflict victims. In order to accomplish this, it is essential that government institutions initiate genuine and comprehensive dialogue with the conflict victims and their supporters, particularly through the Conflict Victims Common Platform in the capital and beyond, as the majority of conflict victims reside outside of Kathmandu and lack the necessary resources to travel there. The authorities and political parties should therefore prioritize national consultations and community level debates among the public that the bill is intended to serve.

2.4 A State-Centric Approach

The TJ discourse is subject to criticism due to its narrow, legalistic perspective, as well as its highly centralized, elite-driven, and state-oriented approach (Lundy & McGovern, 2008; Robins, 2012; Sharp, 2015). In addition to marginalizing victims and their causes, this monopolization eliminates their ability to participate and contribute to the TJ process.

When it comes to transitional justice, it's usually about elite bargains and the power shifts at the top (Waldorf, 2012, p. 179). As a result, the same elite who would have had power before the violence or were even complicit in the oppression, can take over TJ institutions and use them for political gain and to legitimize themselves. This further institutionalizes the power imbalance between elites and non-elites. This prejudice made these TJ systems unreliable to the general public, who viewed them as 'victors' justice' or 'justice' against the Hutu community, which may have exacerbated the ethnic conflict between the two communities (Oomen, 2005; Waldorf, 2006). It can therefore be argued that the elite influence on TJ discourse, in theory and praxis, can be challenging because the political interests of the elites are often at odds with the goals of TJ (Robins, 2012).

Additionally, the elites, whether local or international use technical and legal language of the discourse to assert their authority as 'experts', making it hard for people who need it the most to access it (Gready, 2010; McEvoy & McConnachie, 2012; 2013). They legitimize their existence based on speaking 'about' and 'for' the victim (Madlingozi, 2010, p. 208) and thus ranking themselves higher in position compared to the victims without a legitimate effort to elevate those that are marginalized. These high-ranked TJ players (as Madlingozi describes them) are those with limited knowledge about the local and cultural context, who articulate persuasive Western ideas of justice and rights

and explain why victims' representation is essential and justified. As a result, victims remain at a disadvantage in terms of receiving both the efficiency TJ process, as well as appropriate support from those claiming to represent them. Furthermore, those agencies that victims wish to request are often restricted to the margins of established policies and procedures (Madlingozi, 2010; Robins, 2012; Sajjad, 2016).

However, during the literature review, it was found that scholars like Sharp and Gready who critique the elite-driven TJ processes do not provide a clear definition on who can be thought of as an 'elite' in transitional contexts. So, are elites responsible for creating and executing the TJ procedures like the lawyers, or rather holding powers before the conflict and continue to do, or are they local political elites or national human rights agencies or international, donor community? An argument can be made that members of the elite group can be viewed differently from the victims based on their social class, gender, caste, ethnicity, geography, education, and political affiliations. However, systematic articulation and explanation on the elites who influence TJ processes is missing from the literature.

A final variant of legalism that can be identified in this field is a preference for a state-oriented and hierarchical approach to TJ (McEvoy & McGregor, 2008, p. 25). In his critique, McEvoy and McGregor emphasize a trend toward establishing TJ within state and state-level institutions and treating justice and its administration as their business (McEvoy & McGregor, 2008, pp. 25-28). This assumption tends to hold TJ practice hostage to an entirely state-centered model, where the focus is on building and rebuilding state justice structures rather than on truly engaging with the victims. The focus on the state obscures the importance of indigenous knowledge and traditional practices, as well as the need to create an environment in which ordinary citizens can voice their opinions and cultivate their autonomy. Sharp (2013) elicits that the state is

so caught up in its own self-righteousness that it fails to recognize the need for more robust forms of accountability and legitimacy towards those it purports to serve (p. 28).

In addition, within the framework of a state-centered system, the local community is either viewed as a victim to be saved or a perpetrator to be punished. Lundy and McGovern (2008) argue that the entirety of the post-war population is either perceived as victims who are unable to make informed decisions about their future or as individuals who are driven by a destructive mental state that renders them unable or morally unfit to make meaningful contributions to peacebuilding (p. 265). The victim-perpetrator dichotomy is problematic in that it obscures the experiences and intricacies of victimization and harm. In this approach, the term 'active citizenship' is replaced by the term 'statism,' individuals are either dependent on government sponsored services or services provided by other related organizations, whose functioning is largely top-down (Madlingozi, 2010, p. 213).

The Truth and Reconciliation Commission (TRC) Act may be perceived by the government and political leadership as a mere piece of legislation to be legislated by Parliament, however, for the thousands of individuals and families who have been awaiting justice for more than ten years, this legal document has the potential to influence their livelihood as well as the way justice is achieved in the future. It is possible to rectify any shortcomings that may have been present in the past by acknowledging the right of victims to be heard, to receive justice and restitution, and by including their authentic perspectives in the proposed act, thus guaranteeing ownership of the ongoing transition to justice.

2.5 Universalistic Verses Local Approaches

Transitional justice also bears the common denominator of global human rights discourse: the assumption that it is universal and applicable to a wide range of cultural

contexts. The problem with this view is that the West and the international community most often apply ‘one-size-fits-all’ universalistic approach, which provides solutions that are disconnected from the context and eliminates the distinctions between cultures and religions (Nagy, 2008, p. 276; Viaene & Brems, 2010, p. 199). The thrust of the challenge, as Nagy (2008) puts it, is that the West holds the universal exclusively to itself, while simultaneously incorporating all humanity into its sphere of influence (p. 281).

Different societies have different understandings of the notion of justice. The needs and experiences of the victims also vary widely based on their cultures and local contexts (David & Choi, 2005, p. 392; Kent, 2011, p. 434). Because the democratic social and cultural structures of the Western world (where TJ is typically designed) are very different compared to those of non-Western countries (where it is usually practiced post conflict), such universal justice frameworks often fail to address the various needs and interests of victims (Ramji-Nogales, 2010, p. 2; Sharp, 2013, p. 150). In addition, the application of universal standards across different regions may often lead to the neglect of local knowledge and traditional practices (Lundy & McGovern, 2008, p. 265; Ramji-Nogales, 2010, p. 3). And the lack of a comprehensive comprehension of the framework in which TJ operates such as the historical and structural inequalities may mean that they are mostly understood in peripheral contexts within which gross violations are committed (Miller, 2008).

The literature review found that there is not a nuanced understanding or consensus on the concept of the ‘local’. Transitional justice scholars use a spectrum of definitions that includes non-state, non-government and even state actors when describing the concept (Ramji-Nogales, 2010; Robins, 2015). Sometimes the term ‘local’ is used interchangeably to indicate traditional justice systems such as customary and

indigenous forms of justice. The irony is that despite such varied interpretations, there has been relatively little attention paid to examine the different layers of 'local' that exist within a state and the complex ways in which local communities engage with TJ mechanisms from within their socio-cultural and political contexts (Kent, 2011; Robins, 2015; Viaene & Brems, 2010; Waldorf, 2006).

There have evidently been several attempts made by the international community and state actors to support local and traditional forms of justice and reconciliation efforts in post-conflict societies. The former Secretary-General of the United Nations, Kofi Annan, has highlighted the importance of taking into account indigenous and informal practices for the administration of justice or dispute resolution in order to ensure that they remain relevant and are conducted in accordance with both international norms and local customs (UN. Secretary-General, 2004). Popular examples of this include Rwanda's Gacaca courts, northern Uganda's *mato oput* rituals, Sierra Leone's traditional 'water' cleansing ceremonies, and Guatemala's Mayan Cosmovision (Arriaza & Roht-Arriaza, 2008; Nagy, 2008; Oomen, 2005; Viaene & Brems, 2010). While many of these local initiatives, such as *Gacaca* courts, received extensive donor support and attention, others were initiated by local communities with minimal international intervention or state support.

Polarized views have emerged among scholars regarding the influence of local and grass-roots strategies on mainstream TJ strategies, as the concepts of traditional authenticity and real involvement become more of a formality rather than a reality (Lundy & McGovern, 2008; Oomen, 2005). In the post-genocides Rwanda, for example, the traditional court of *Gacaca*, which dealt mainly with land and family issues, was given the task of handling complex cases of genocide, rape, and sexual violence. This initiative has been widely praised by the international community.

However, critiques have claimed that the authenticity of these courts has been diminished due to their rigid mandates and organized structures. In the past, the courts of *Gacaca* were able to adjust their procedures according to the types of cases they handled and the regions from which they operated (Oomen, 2005, p. 904).

2.6 Theory Versus Applicability Challenge

In recent years, several researchers have sought to investigate the practical implications of TJ research, however, there is still a lack of research literature that assesses the effectiveness of TJ interventions in practice (David & Choi, 2005; Robins, 2012; Thoms et al., 2010). In fact, there is also little to no empirical research on victims and local communities covered by TJ - who are arguably the most important beneficiaries of such justice-seeking processes (Robins, 2012; Thoms et al., 2010).

There haven't been many attempts to really dig into the concept of TJ in a sustained and systematic way. de Greiff (2006) argues that transitional justice 'field remains tremendously undertheorized'. The scholarship has been subject to a wide range of interpretations depending on the perspective from which it is viewed although there is consensus on certain fundamental definitions and key mechanisms. The lack of a coherent conceptualization results in the discourse being characterized by ambiguity and contradiction. In addition, its theoretical framework does not elucidate the relationship between TJ mechanisms, nor does it explain how their objectives can be mutually reinforcing and complementary, much less how the dialogue can contribute to the attainment of the wider objectives of enhancing human rights and democratic processes in fragile societies (Thoms et al., 2010, p. 344).

The articulation above perhaps stems from the fact that TJ is mostly understood from the normative perspective instead through theoretical analysis and empirical research (Bell & O'Rourke, 2007; Dube, 2011; Robins, 2015). Transitional justice argues that it

is necessary to address past injustices, but it relies on a descriptive, normative framework, which is frequently imposed by legal scholars using the democratic liberal model.

Another difficulty with TJ's applicability is its lack of ability to identify relevant contexts that are essential for its effective implementation. For instance, although the scholarship has moved base from middle-income post-authoritarian Latin American countries of the 1980's to African and Asian countries with internal armed conflicts and extreme poverty today, perhaps it does not take into account the radically different socio-economic and historical contexts in which it currently operates. It is also having difficulty adapting to the ever-evolving landscape of the field. How, for instance, can TJ explore the emergence of new actors playing a catalytic role in the recent regime shifts in the Middle East and North-Africa (MENA) region? In the context of established TJ systems in developed countries such as Canada and Australia, how should it operate? Robins (2015) is correct in asserting that the concept of TJ has become outdated in an era that is closely associated with the changes that have occurred since the end of the Cold War and the decadence of the past (p. 182).

Paige (2009) argues that one of the things that makes the field unique is because of its comparative underlying facts and assumptions (p. 326). One of the shortcomings of this strategy is that TJ policymakers adopt a 'one-size-fits-all' approach, shifting the implementation of the transition justice agenda from region to region, in an almost experimental manner, to assess its success or failure. Few scholars have therefore been scrutinized for collecting country-case studies, cross-country comparisons and lessons-learned for their own vested interests (Leebaw, 2008; Paige, 2009). As mentioned earlier, what they perhaps do not consider is that sometimes, it is simply not possible to compare regions or countries that are so socio-economically, culturally, and politically

diverse from each other.

2.7 Emerging Perspectives on Transitional Justice

The traditionalist notion of TJ is progressively debated, as outlined in previous sections. There is a growing interest in revisiting and examining the foundational paradigms of scholarship and forging new ideas that question its root challenges. This section discusses the opportunities and ideas developed in the last few years and discusses a critical perspective as well as roadmap to explore how TJ can be strengthened and supported so that its work is more in line with expectations of the population it purports to serve. Although innovative approaches and ideas discussed below have their own set of challenges, it does serve to initiate a discussion that could potentially improve the discourse in responding to the complexities when dealing with mass atrocities in transitioning societies.

It is to be noted that not all the sub-sections below are in accordance with or address the critiques highlighted in the previous sections although most do attempt to discuss the foundational challenges of the debate. For instance, this section elucidates how increasing debates on incorporating social injustices and economic marginalization issues can potentially shift the focus from the dominant legal perspectives within the TJ scholarship. Also, since one of the main objectives of this research project is to develop nuanced understanding on the concepts of victimhood and agency, this section explores some of the advances and accomplishments made towards it, in both theory and practice, in more detail.

2.7.1 Expanding Definition and Scope of Transformative Justice

Transforming justice draws on the knowledge gained from conflict transformation and peacebuilding, emphasizing the need to address various forms of social and economic

inequality, as well as to ensure that local communities are actively involved in the development of TJ policies and procedures (Gready, 2005; Lambourne, 2009; 2014). According to Gready and Robins (2014) define TJ is a transformation that focuses on domestic ownership and measures, the emphasis on undertaking but not the predetermined results, and the challenge of unequal and interdependent power relations and exclusionary structures at both local and global levels (p. 340). In the meantime, Lambourne (2009) argues that transformative justice necessitates a reorientation of the concept of transition, which he defines as a transitional process that interconnects the past and future, and the shift to the concept of transformation, which entails long-term, lasting changes in society and the acceptance of a range of socio-political, economic, and legal perspectives on justice (p. 28).

The concept of transformative justice has several advantages; first, it is presented as evidence-led rather than a normative-oriented framework, and a process-driven rather than outcome-driven approach, which emphasizes long-term sustainable processes (Gready & Robins, 2014). Secondly, it is seen as a "bottom-up" approach that promotes local ownership while simultaneously challenging the elitism and hierarchical structures within the dominant TJ discourse. Thirdly, it entails a shift in emphasis from the consideration of civil and political rights to the socio-economic root causes and repercussions of past violations (Evans, 2016; Gready & Robins, 2014). Fourthly, it encourages the involvement of victim agencies and communities, and recognizes the multifaceted and complex needs of victims in the aftermath of conflict (Evans, 2016; Lambourne, 2009; Sandoval, 2015).

Waldorf (2012) argues that TJ, as it is, is stumbling in addressing the matters that the victims have prioritized and is regularly failing to provide reparations or implement recommended institutional changes (pp. 175–179). It is, therefore, argued that TJ, in

attempting to assume the additional responsibilities described by transformative justice, ends up compromising its already limited goals and objectives. Even Lambourn and Gready (2014), and Robins (2014) acknowledge that while transformative justice has great potential, considerable questions still arise in translating these challenging goals into plans and policies.

2.7.2 Addressing the Socio-Economic Rights

In the context of TJ discourse, there is a growing conversation about the marginalization of socio-economic and structural violence. Scholars and lawmakers have emphasized that economic inequalities should not be reduced to narrow discussions on reparations and structural violence should not only be acknowledged in the peripheral contexts (Laplante, 2008; Miller, 2008; Waldorf, 2012). Waldorf (2012) is correct in asserting that the systemic inequalities that existed historically may be of equal or greater importance to survivors than the extreme inequalities that exist today (p. 175). In a persuasive speech delivered by Louise Arbour (2006), the former UN High Commissioner for Human Rights, she suggested that emphasis of TJ should not only be for the crimes and violations that took place during the transition period, but also those that occurred prior to the transition period and were either the cause or a result of the conflict. Such a search is likely to uncover many violations of socio-economic as well as cultural rights in addition to intentional discriminations (p. 2).

At a practical level, a growing number of truth commissions globally, like those from East Timor and Sierra Leone, have attempted to investigate the roots of civil war with emphasis on socio-economic and cultural exploitations that the victims of the conflict have experienced (Sharp, 2013). Structural violence has also been addressed by recognizing social intolerance, for example, land discrimination and seeking

compensations through reparation programs (Evans, 2016, p. 4). There have been cases where victims and survivors have organized themselves as victim groups and designed their own set of rights to articulate their demands and concerns with state and transitional justice community (Kent, 2011; Robins & Bhandari, 2012).

The truth commissions' guidance regarding structural violence have not been consistently executed by state in addition to ignoring victims' demand seeking social, economic and cultural rights. One can argue that they may be inherent challenges in applying TJ processes towards addressing socio-economic injustices.

However, this trend does help shift the debate from the dominant legal and political perspectives of justice to discussions on social injustice and historical marginalization. Even though viewing patterns of economic inequality and discrimination solely through the individual, rights-based lens may mean ignoring collective needs and identities of the victims that are not articulated in the language of rights.

2.7.3 Advancing Victim-Centered Approaches to Justice

Over the last decade, there has been an increasing importance given to the victim centeredness in designing and implementing TJ processes (García-Godos, 2013; 2016; Robins, 2012; Sajjad, 2016). The concept of victim-centric justice describes a TJ as an approach that is created to address the demands outlined by the victims on their own (Robins, 2012, p. 86). This concept may be able to challenge the predetermined and elite-driven approaches to TJ. Scholars argue that by incorporating and prioritizing victim's needs, preferences and experiences in TJ mechanisms, there is a high likely possibility of its successful implementation owing to the local ownership (García-Godos, 2008; Robins, 2012; Sajjad, 2016). The implementation of a victim-centered approach enhances the probability of TJ outcomes being accepted as legitimate,

particularly when compared to outcomes that are imposed by outside entities and political elites (Robins & Bhandari, 2012). Victims' needs are likely to differ from what the legal TJ discourse prescribes. These perspectives will be grounded on the lived experiences of the victims and the local communities, thus offering solutions that are coherent to local contexts and cultures.

Despite the rhetoric and attention given, the concept of 'victim-centric' approach remains poorly conceptualized (Miller, 2008; Robins, 2012). It appears that the TJ community has not researched into whether and in what manner their work will have the effect of empowering or disempowering victims (Madlingozi, 2010, p. 225).

2.7.4 Encouraging 'Bottom-Up' Approach

In recent years, researchers and practitioners have attempted to deviate from the traditional approach of TJ and adopt a bottom-up approach to justice, which emphasizes the ownership and involvement of local communities (Theidon, 2006, p. 436). A bottom-up approach at the local level not only allows for the diverse and lived experiences of communities but also exposes the complexities of exclusionary socio-political systems and power dynamics within local contexts.

Different perspectives emerge on how scholars and policy makers understand the relevance of local, bottom-up TJ approaches. Ramji-Nogales (2010), for example, claims that because 'norm generation is an inherently communal and contingent social process', TJ processes are more likely to be seen as legitimate and credible (p. 4). Similarly, Robins (2015) suggests that adopting an elicited methodology grounded in the local contexts that encourages victims to find their own methods of resolving the trauma is more likely to be successful (p. 190). Further, by tailoring TJ initiatives to understand local contexts may mean that communities are likely to develop a stronger sense of

ownership towards these projects (García-Godos, 2016).

Giving attention to the local culture and contexts also means being aware of certain risks and concerns that come along with it. On the one hand, the TJ community could oversimplify cultural complexity and on the other hand, it could favor local and cultural justice mechanisms that may characteristically be coercive and patriarchal in nature that could be prejudiced towards females and marginalized class (Arriaza & Roht-Arriaza, 2008; Viaene & Brems, 2010, Theidon, 2012). In similar context, there can be biased restriction, where international community only favor those local practices that are clear, comprehensible, and manageable to them (Viaene & Brems, 2010, p. 221) – something that can be easily assimilated into the general framework of TJ and, therefore, does not call it into question.

2.7.5 Forging Linkages with Peacebuilding

In his article, Van Zyl (2005) emphasizes that TJ strategies must be seen as a fundamental element of peacebuilding, as they are designed to address the grievances and needs of victims, foster reconciliation, reform state institutions, and restore the legitimacy of the legal system (p. 210). While the above statement reflects how TJ is deeply embedded in the narrow definition of liberal peace, it does emphasize the need for constructing powerful ties between the sustainable peacebuilding and TJ discourse.

In this pretext, Sharp proposes re-imagining and re-designing transitional justice as a peacebuilding process (Sharp, 2015, p. 150) that moves away from guarantees of negative peace and embraces the concept of positive peace (Galtung, 1969). This paradigm shift, Sharp argues, not only has the potential of challenging TJ's liberal roots but also addressing socio-economic issues within the peacebuilding framework (Sharp, 2015, pp. 152-158). Similarly, scholars like Lambourne (2009; 2014), Gready and

Robins (2014) propose the concept of transformative justice, which is anchored in the peacebuilding paradigm. On a practical level, Laplante (2008) suggests that truth commissions should not only hear testimonies of the victims but also understand the broader, structural contexts that enabled the violations to take place (pp. 331-332). This way it can ask relevant questions and recommend political reforms in ways that can increase the possibility of positive peace in post-conflict societies. While there is an immense potential in forging intimate links between TJ and peacebuilding, there seems to be ‘relatively little formal connection’ (Sharp, 2015, p. 154) between the two discourses in both theory and practice and their relationship is ‘surprisingly under-researched’ (Van Zyl, 2005, p. 210). This, therefore, highlights the need to closely understand the meaning of transitional justice-peacebuilding nexus in practice and how its variation from TJ being seen as an inheritance of liberal peace.

2.8 Conceptual Framework

One of the biggest challenges in post-conflict or oppressive regimes is dealing with the legacy of severe human-rights violations. Based on experience, one can establish a connection between addressing this legacy in a holistic and inclusive way and creating a lasting peace.

2.8.1 A Holistic Approach to Transitional Justice

A set of principles as endorsed by the UN Human Rights Commission on the issue of impunity for human rights violators, which subsequently emerged as the foundations of a comprehensive approach to resolving the past, necessitate action in four areas: the a) right to know, b) right to justice, c) right to reparation, and d) guarantee of non-recurrence. It should be noted that these four areas are not independent, but they actually have mutual impacts and dependency. The primary emphasis is placed on the role of

both the victims and the perpetrators in transforming them into equal members of society.

The researcher has tried to analyze the TJ process of Nepal within the framework discussed above. So far Nepal's TJ is a delayed process. In the last 17 years after the underwriting of the peace agreement, it has worked partially on three components out of the four that include right to truth, right to reparation, and guarantee of non-recurrence but unfortunately, work on right to justice component has been slacked off.



Figure 2.1: A conceptual framework for understanding the transitional justice process that includes the four rights as shown.

Figure 2.1 shows the graphical representation of the four-component approach for understanding and implementing the TJ process for dealing with the past. The approach views transitional justice as an extensive approach that institutes tradition of holding the perpetrators accountable as well as establishing law and reconciliation.

a) **The Right to Know:** This refers to the importance of individual and collective knowledge to understand the reasons, experiences, and consequences of human rights abuses. Accumulating this knowledge is not just a matter of fact finding and there are several tools that can be used to support a long-term decision-making process that takes into account the varying needs of individuals and communities in building knowledge and truth about the past. This is done in the hopes of preserving memories, securing documentation, and safeguarding history from revisionist point of view.

Missing Persons: The investigation of missing persons is a priority for immediate family members and victims, which is why it is often the first step in the process of Dealing with the Past. It is essential for relatives to have knowledge of the whereabouts of their missing loved ones and to be able to ascertain whether they are alive or deceased. Consequently, exhumation and in many cases, forensic analysis are necessary. It becomes inappropriate for grieving to commence without establishing the truth whether a person has deceased or not.

Established in 1996, the International Commission on Missing Persons (ICMP) is responsible for ensuring that governments cooperate to locate and identify individuals who have gone missing during an armed insurgency. ICMP has pioneered the use of DNA testing as a means of first identification of the vast number of individuals who have gone missing in a conflict and has contributed to the establishment of memorials and tributes to those who disappeared.

In Nepal there has been a prolonged wait for the missing-person families to locate the whereabouts and the status of missing member of the family. The narratives chapter will elaborate on the Nepali context. The Government so far

has not been accountable to provide truth about the missing persons of war in Nepal. Formation of the two commissions is the welcoming step in the transitional process of Nepal but it's a slow process as it has not started its work yet and is not clear about its process.

b) The Right to Justice -The right to justice means that the state has a moral obligation to bring the individuals that are guilty of human right violations to justice. This obligation is mandated by International Human Rights and Humanitarian Law and guarantees blanket immunity for cases of torture, crimes against humanity, genocides and war crimes is no longer permissible. The establishment of fair and transparent trials is widely regarded as convincing approach so that individuals are held accountable for their wrongdoing, which can help to challenge the culture of impunity and guarantee that victims' injuries are legally acknowledged. Decisions must be made as to the type of process that is most appropriate for each society that is going through a Dealing with the Past process to achieve a legitimate as well as meaningful form of accountability in each situation.

The right to justice component is the most critical one in Nepal given the political motive and actors of the conflict in the power play. The TRC bill of Nepal has been met with strong criticism and opposition from the global community, victims, and civil society organizations. The main concerns center around the bill's violation of international law, Supreme Court verdicts and Nepali Constitution, and the bill's alleged de facto pardoning for individuals committing gross human rights violations. For the bill to be effective, it is essential that these concerns are addressed and resolved. Failure to do so would result in a pseudo attempt to bandage the wound left by the ten-year long

conflict, without the support of the victims, as well as from the national and international community.

- c) **The Right to Reparation** -The right to reparation is a form of human rights protection that seeks to recognise the harm suffered, to ensure dignity, and to promote ongoing capacity building. It involves the provision of restitution, compensation, or rehabilitation to individuals who have been victims of violations of human rights. Nepal could also learn from other countries and try to address the victims in the local context. Few of the peace building organizations in Nepal are helping the victims' families to construct Pati/Pauwa, Chautari and storytelling and photo exhibitions.
- d) **The Guarantee of Non-Recurrence**- Dealing with the Past also guarantees the non-recurrence of past human rights violations. The Latin American human rights movements adopted the slogan "Nuncio más!", which translates to "No more!", as their initial call to action, which initiated examination on the history of violence in Argentina, Chile, and Brazil, as well as in Peru and Guatemala. Democracies, civilian oversight of the security forces, the rule of law, and a functioning judicial system are all preconditions for the prevention of systemic human rights violations. The establishment of such structures is a costly and time-consuming process which typically begins with demobilisation and disarmament initiatives, free and fair electoral processes, security sector reform, constitutional reform, and the establishment of a functional and independent judicial system.

Demobilization and Reintegration of Combatants- Demobilization, disarmament and reintegration of rebel groups and the reorganization of an

oversized army in the aftermath of a peace agreement are often significant initial steps towards enhancing the public security.

Elections and Constitutional Reforms- Following an armed conflict, or fall of an oppressive government, it is important to address issues and make decisions regarding the right stage for an impartial electoral process. Furthermore, the establishment of a legitimate government necessitates fundamental constitutional reforms. This includes building parliamentary control, reducing presidential authority and establishing ways to bring the combatants under appropriate jurisdiction.

Reform of the Security Sector- Human rights violations that are common in militarized regimes could be avoided if the security apparatus, particularly the military and police, are brought under democratic control. This necessitates both re-organization and training.

Reform of the Legal System - Human rights violations and the misuse of power can be prevented by a functioning legal system, which is why fundamental judicial reforms at all levels are prerequisite for the Guarantee of Non-Recurrence.

Lustration/Vetting- In order to strengthen democratic institutions, individuals who have been implicated in human rights violations must be excluded from political office or removed from office. The role of public office holders in the past must be reviewed in order to strengthen the legitimacy and credibility of the newly established institutions.

Nepal has had a multitude of political changes after the 2006, from establishing the multiparty system by abolishing 240 years old monarchy and disarmament and reintegration of Maoist ex-combatants into the state army, local and national elections and introducing federalism.

2.9 The Nepali Context

a) Truth seeking

Revealing the facts surrounding these incidents is essential for most victims of human rights violations. Families of those who have disappeared are still unaware of the whereabouts of their loved ones. The truth is important for all parties involved, including their families and the wider community.

Truth seeking in the post-conflict context of Nepal has not yet been established. The state has financially accommodated the family members of the disappeared persons and those that are deceased in their records, but there is still lack of official acknowledgment as well as formal apology. In Nepal, where the traditional power structures of the Maoist regime and the State remain in place, the commissions may not be able to uncover the full extent of the truth, as the process is driven by powerful conflict actors. This is due to the power dynamics of the country, and the difficulty of constructing a unified narrative and understanding of past abuses.

The way the commissions will ascertain the truth and who will benefit from it will be determined by a variety of factors. These include the scope of the commissions' mandates, as well as the availability of time and personnel, political influence, and the manner in which evidence and analysis are collected. These elements may impede the completion of the final report, which could be very unsatisfactory. Clarification and

guidance should be provided regarding the types of truth that should be examined, documented, and presented, for whom, and by which means. Currently, there is a lack of confidence that victims of the war will receive a satisfactory response, or that they will be able to obtain the full truth they are seeking.

b) Reparation

Although some family activists welcomed the concept of reparations, it was an ideology that many families of the victims at the district level could not grasp fully. The government paid compensation to the family four times yet did not acknowledge it by issuing a formal apology that could have made a significant positive impact to the family members. Victims demand recognition along with monetary reparation which addresses broader social, economic, cultural, and psychological violations.

In order to ensure that human rights violations do not recur and to reduce the likelihood of future acts of violence, the TJ process must attend to the issues of cold social relationships and trauma in addition to other socioeconomic issues. Reparations, such as financial compensation, rehabilitation services, emotional relief, and genuine apology to victims and their family can embark on their complex needs and give the impression of a real desire for creating an atmosphere to survive.

It is also necessary to provide details on how victims of conflict will be able to access the reparation programs. The TRC and the CIEDP are mandated to make recommendations on reparations. Therefore, there is a need for a well-defined set of actions for ensuring unbiased reparation for all victims regardless of whether or not they are associated with any commission. Reparation must be defined as a legal right that the victims and families can exercise but it must not be interpreted or used as an aid, welfare, or facility for them. These actions should be tailored to the priorities and

needs of the victims. Additionally, it should be addressed comprehensively by including not only the individual reparations, but also focusing on both representative and social levels.

For effectively addressing the underlying roots of human rights violations of the past, a reparation strategy must attend to wider socio-economic and cultural infractions in connection with the structural violence that took place after the civil unrest, and thus classifying them by caste, ethnicity and economic status (International Center for Transitional Justice [ICTJ], 2012).

The establishment of the Interim Relief Program (IRP) has provided victims and families with a range of reliefs such as financial rewards, educational grants for the children of the suffered, medical compensations and care at government facilities, skill-based employment training, and compensation for property destroyed during the armed conflict. It should be noted that IRP has only been around for a short period of time and has not yet been able to address all victims' needs. The IRP's experiences have been reviewed as well as registered (ICTJ, 2012). For making sure that victims' socio-economic and cultural needs are met, it is important to not only have a reparation policy that is inclusive in nature but also to ensure that the development policies of the Government and donor agencies should align well with TJ (Robins, 2010).

Not only should the state make financial arrangements for the victims and their families but also establish an acceptable mechanism for recognizing and attending to the underlying consequences of past grievances.

c) Security of Victims and Witnesses

The procedures of the commissions have failed to provide appropriate protection not only for the victims but also for the witnesses. The most significant factor is the level of trust. If there are no credible measures in place, victims of violence on both sides will not be able to speak freely and provide honest testaments. There should be safeguarding mechanisms in place that commissions must establish, including a guarantee of safety for victims and witnesses, evidence protection, and secure archiving.

The TJ process needs to put more emphasis on protecting victims and witnesses, and discrete established procedures must be put in place to guarantee this to occur.

d) Victims' Consultation in Policy and Implementation

Consultation plays an important role in shaping discussion and framing policy, yet it is lacking to happen victims' families and their associations. One of the key elements of a victim-centered approach to TJ involves consulting with victims at a broader level.

One of the major dissatisfactions of the victims' associations in Nepal is they were not consulted during the policy making phase of TJ. Their major complaint is policies are made by the state actors based in Kathmandu and victims from all around the country are not included in the process. It is essential to make sure that victims are included throughout the process from policy formulation to when it is actually put into practice. This will help enhance their representation and ensure that they can engage and assume responsibility in the TJ approach. A good starting point for making sure that victims engage and participate in the process for building a more peaceful future is to design and implement a more comprehensive policy which guarantees a bottom-up approach

in the TJ process rooted at the family level for attending to complex daily need of the victims and their family.

2.10 Research Gap

On the research gap, the researcher has discussed about how TJ has been a western concept based on the legalistic and universalistic approach. The existing research and literature are focused more on the conceptual and theoretical approach of TJ whereas it lacks the local context and lived narratives of the victims. This research, on the other hand, exclusively brings out the narratives of the victims and focusses on the victim centric approach to TJ. It analyses the importance of local knowledge and approaches and victims' participation in dealing with the past and conflict transformation.

CHAPTER 3: RESEARCH METHODOLOGY

In this chapter, the researcher has addressed the methodological concerns, providing information on the research design, the research environment, and the sample selection, the sampling methods, the data analysis steps, the robustness and validity of the study, the ethical implications of the study, and the limitations of the study. This chapter outlines the rationale for the adoption of research tools and the reasons why they are essential for the researcher to conduct specific analyses.

The researcher's methodology is in many respects consistent with the ontology and epistemology she has employed to investigate the social phenomena and at the same time, offers reasoning to the choice of research methods she has opted to produce the knowledge (Grix, 2002; Krauss, 2005; Morgan & Smircich, 1980). The chapter sets out with a discussion on the relevance of the underlying philosophical assumptions of constructivist/interpretivist research paradigm that researcher has adopted for this study. This is followed by an in-depth discussion about various reasons for using critical ethnography methodology in this study and how it has its origin and grassroots to conventional ethnography. After that, the techniques implemented in the field visits for collecting and analyzing data in the research process are explained including the sampling as well as data analysis techniques. Finally, ethical considerations pertinent to the fieldwork are presented.

The overarching research question of the study was to understand the approaches of transitional justice and how it interacts with the victims of armed conflict and their needs.

3.1 Philosophical Assumptions and Paradigms

Understanding the fundamental philosophical assumptions that a researcher adopts for one's ontology (what is available for us to know) and epistemology (what and how we

can learn about it) allows not only to recognize researcher's position within the research, but also the appropriateness of the methodology and techniques employed to acquire the knowledge (Grix, 2002; Morgan & Smircich, 1980). A researcher's paradigm that is related to the primary set of beliefs or worldviews that shape the investigation process (Guba & Lincoln, 1994, p. 105), refers to a primary hypothesis involving the phenomena under study and is essentially connected with the researcher's strategy for designing research questions (Holden & Lynch, 2004; Krauss, 2005). For this study, the researcher has adopted a constructivist or interpretivist paradigm (the terms used interchangeably) which takes 'relativistic' ontological and 'subjective' epistemological approaches to inquiry.

Constructive/interpretivist paradigms are characterized by their 'relative' ontology, in which it is asserted that several manifestations of truth can be based on how the phenomena are interpreted by several individuals (Krauss, 2005; Scotland, 2012). Contrary to positivism that interprets the social events as dissociated with social agents, constructivism/interpretivism argues they are entirely dependent on each other (Bryman, 2001, pp. 16-18). Social constructions of reality are based on people's experiences taking place in their own socio-cultural, historical, and personal events (Hennink, Hutter, & Bailey, 2011, p. 15) which indicates that a scholarship generated from research is largely contingent upon those events.

Epistemology of constructivism/interpretivism is subjectivism which suggests that the only way to generate knowledge from investigative research is through interactions between inquirers and participants (Scotland, 2012). The subjectivists focus has more to do with how individuals interpret a circumstance on hand (Hughes & Sharrock, 1997) and thus, advocate for a more profound comprehension of the multiple understandings and implications of individuals that emerge out of their lived experiences. Subjectivists

also accept that the knowledge produced by researchers because of their opinions, principles, and social standings is valuable as the world would not be in existence without such knowledge (Holden & Lynch, 2004; Morgan & Smircich, 1980).

3.2 Relevance of Constructivist/Interpretivist Paradigm for the Research

A primary critique that a researcher has made about the traditionalist approach to transitional justice presented in Chapter 2 circles around the fact that the debate uses universalistic approach for all transitional justice situations and hence overlooks the variable social context in which the local population inhabit. Following the constructivism ideology, particularly the concepts on *Verstehen*, which focuses on the interpretation of the meaning an individual has of an action, and agency (actions guided by meanings and values), researcher's aim was to analyze the incident and circumstances from the perspective of those who experience them (Schwandt, 1994) for the victims of conflict in Nepal.

With the particular focus on exploring victims' agency beyond their articulation as weak, passive, and helpless beings, Schwandt's (1994) interpretation of social agents as autonomous, deliberate, active, and goal-oriented; they interpret, create, and express their own behavior, as well as the behavior of other agents (p. 225) within the interpretivist paradigm aligns with how researcher views victims within these societies. Similarly, researcher acknowledges Krauss (2005) assertion that in order to find this subjective purpose, researchers need to be able to relate to social players and understand the goals, motivations, and causes of actions (p. 765). To sum up, a researcher's position as a constructivist or interpretivist will help researchers derive knowledge based on cultural foundation, historical context, and on the participant's narrative of their daily experiences.

While researchers argue that the constructivist/interpretivist paradigm is most

appropriate for the worldview that subscribes to and research questions posed through this research, it has its limits. The primary challenge is to determine the validity (the accuracy of the results) and reliability (the reproducibility of the results) of the knowledge produced because unlike the positivist's paradigm, constructivist/interpretivist research are subjective, interpretive, socially constructed and context driven and therefore, not capable of producing scientific and objective results (Scotland, 2012). The second shortcoming of the positivists' point of view of constructivism/interpretivism is that the way in which the researcher perceives, thinks, and acts has an impact on the way in which the knowledge is created, and thus, it is not value-free (Costantino, 2008).

Anthropologist Geertz argues that an inquiry can be effectively accomplished if the investigator can furnish detailed findings by immersing in the field that increases the understanding of a particular social phenomenon (Geertz, 1994) and then it is up to the readers to decide whether or not it is dependable and transferable to other contexts (Cohen, Green, & Wood, 2013; Guba & Lincoln, 1994).

3.3 Methodological Approach – Critical Ethnography

For this study, the researcher has adopted the methodological approach of critical ethnography because it allows to justify how researchers can acquire and produce knowledge on research topic, as well as choose research methods and approaches to achieve this.

3.3.1 Critical Ethnography

Critical ethnography, although considered a new concept for conducting a research projects, has its basis on the known fact of what can be referred to as 'traditional' ethnography (as discussed in above paragraphs). Cook makes an argument that critical ethnography emerged from criticism over the traditional ethnographic approach, which

did not consider the social structures of class, patriarchy, or racism, and questions regarding the viewpoint of critical theory, which did not consider the lived experiences and roles of human players (Cook, 2012, p. 2). As the work of Guba and Lincoln (1994) suggests, credibility, dependability, and reflexivity are some of the criteria endorsed by critical ethnographers to validate their work.

Essentially, critical ethnography is a type of traditional ethnography that is intended to serve a political purpose (Madison, 2011, p. 1). This methodology is distinct from the traditional ethnographic approach in that it emphasizes the exploration of aspects of a phenomenon, as well as the exploration of subjective meanings in specific contexts.

Additionally, it emphasizes three critical tenets:

- 1) It is political in the sense that it challenges existing power structures and structural inequalities and is concerned with civic transformations,
- 2) It examines a need for a broader socio-economic transformation associated with specific social circumstances, and
- 3) It emphasizes on researcher's self-consciousness and promotes own understanding of how her particular stance influences her interpretation of the knowledge.

3.3.2 Need for using Critical Ethnography in this Research

In order to elucidate the justification for incorporating critical ethnography into the research project, the researcher has discussed and contextualized the above three tenets in further detail. In many post conflict societies, power structures tend to perpetuate everyday injustices that are rooted in historical inequalities, sometimes overtly and other times covertly. Such power dynamics determine the relationships in socio-cultural, economic, and political domains within a particular local context. In Nepal, where researcher has conducted the field work, the insurgency of 1996 had its roots in

deep seeded grievances towards exclusionary, elite-dominated social and political system and persisting ethnic, caste and gender-based disparities.

The primary reason why critical ethnography methodology was used for this research project is to allow the researcher to better understand the structures of power and how elites have dominated the Nepali society and more importantly, to contribute to the efforts of social change. The research agenda follows the ideology that no one else can better understand or articulate victimhood and agency than the victims themselves, and therefore, they are best suited for suggesting avenues for social action. As part of the research objectives, researcher has explored and analyzed how victims of conflict in Nepal define their understanding of what a victim is and what they should expect to get from a transitional justice mechanism that is in place as well as what they can do in order to make sure that the process is properly designed and implemented to address their needs.

A critical ethnographic methodological approach will allow the researcher to understand how victims know for themselves what they are actually looking for in own terms and within their own community in order to encourage outcomes that comes from the root and challenges the authoritative, legally driven, and elite-centric transitional justice practices, in Nepal and in the global practice. It helped the researcher to contribute towards emancipatory knowledge production because victims' testimonies, as part of the research findings, can become a tool around which the victims and victim groups can potentially mobilize and lobby to reach out to relevant authorities. As Robins (2011) argues, from an ethical point of view, this approach makes sure to establish a legacy for promoting measures that can attend to the needs of victims (p. 134). To summarize, the research will seek to contribute to address and challenge the understanding of transitional justice mechanism in countries like Nepal,

where it remains highly authoritative and hierarchical in approach.

In the context of the study site, the understanding of country's caste- and class-based social structure and the grievances related to underlying issues of poverty and historical discrimination is crucial for developing a nuanced understanding of the views and perceptions of the research subjects, and to observe how their actions in specific contexts relate to these broader structures. Implementing critical ethnography methodology will, therefore, help the researcher to explore and analyze, when feasible, broader structural elements that influence how research participants relate to their life experiences and how they perceive their marginalization – expressed or concealed – in relation to research questions.

Reflexive inquiry and researcher's positionality are also part of critical ethnography methods. Not only does reflexivity play an increasingly important role in validating qualitative research, but it also prompts ethnographers to examine and contemplate how and under what conditions knowledge has been constructed and produced (Mauthner & Doucet, 2003; O'reilly, 2008). In the similar manner, the concept of positionality is essential in that it necessitates the recognition of one's own power, privileges, and prejudices, just as it necessitates the denunciation of the power structures that encircle one's subjects (Madison, 2011, p. 7). Using critical ethnographic methodology for this research will, therefore, allow researcher to gain self-awareness of own position within the Nepali socio-cultural and economic contexts and discuss its implications on data collection and analysis process.

3.3.3 Limitations of Critical Ethnographic Methodological Approach

Although critical ethnography provides researchers with a range of advantages, it is also associated with several drawbacks. Firstly, it is seen as a novel approach to ethnography that necessitates further investigation, in which certain frameworks and

practices must be challenged and discussed (Cook, 2012). Secondly, like traditional ethnographers, critical ethnographers embrace subjectivity and particularly with their political standpoint, they are viewed as even more closely involved in the research process and those researched. This may pose questions on the researcher's biasness that may inhibit a critical perspective and related ethical considerations that may influence the social issues being examined (Jordan & Yeomans, 1995; Murchison, 2010).

Following up on this, critical ethnographers are regarded as those who prioritize contributing towards social justice so much so that their own positionality and its impact on the research tends to get sidelined (Madison, 2011, p. 7). And finally, it is to be noted that some of critical ethnography ideologies can conflict with the constructivist/interpretivist approach – for example, the latter often focusing on meanings created in individual and spatial contexts and not lending itself enough towards discussions on injustices and oppression affecting a particular phenomenon within the larger social and political structures (Cook, 2012).

3.4. Research Methods and its Implementation

While the terms 'method' and 'methodology' are often used interchangeably, the former can simply mean 'methods and processes for collating and analyzing data' (Blaikie, 2000, p. 8; Emerson, Fretz, & Shaw, 2011), the preference of one over the other is typically determined by project's research questions.

3.4.1 Research Methods

Just like conventional ethnography, critical ethnography uses a range of research methods for data gathering and analysis purposes. The tools that have been selected for this research are a) conversations and semi-structured interviews, b) life histories, c) informal group discussions and d) participant observation. These research tools were chosen to enable me gather in-depth and comprehensive insights into the phenomenon

under study, as well as to generate efficient methodological connections in order to attend to shortcoming nature of validity and dependability needed in a qualitative research methodology like critical ethnography may present.

3.4.2 Semi-Structured Interviews

Ethnographic interviews are characterized by collaboration rather than interrogation, usually not ordered but rather are highly open-ended and casual (O'Reilly, 2012, p. 15). As such, in the initial period of the field work, researcher has focused more on informal conversations with the research participants, mostly victims of conflict, as it helped to gain some level of trust and rapport with them and more importantly, understand the topics that are of interest and importance to them (Fetterman, 2012; Murchison, 2010; Reeves, Kuper, & Hodges, 2008).

Following up on informal conversations, interviews that were more or less semi-ordered in nature were conducted with the victims and/or their families, to enable the researcher to know their perspectives and behaviors within the context of their everyday life. The interviews were in-depth and structured in nature yet informal to allow the participants to answer what was asked during these surveys comfortably on their own terms, at their own pace and in their natural settings. Such interviews will help the researcher to access emic knowledge on the experiences of the research participants to clarify and answer research questions, as well as obtain background information essential to construct individual and wider structural contexts (Bray, 2008; Murchison, 2010). An interview schedule was developed, which was followed loosely and underwent changes during the field work based on the priorities and interests of the participants.

In addition to interviewing conflict victims, researcher also conducted interactions with relevant state, social and international actors based in Kathmandu and district

headquarters, to establish an appropriate connection between policy-based approaches as well as the needs and expectations of people regarding transitional justice processes. The critical ethnography outlook of the research also expects contacts with such actors as an important step for presenting the result of research (at a later stage) and to encourage these stakeholders to be able to examine the issues from the perspectives of the participants that were interviewed and also relating to the research findings.

3.4.3 Narratives

For this research, the researcher used ‘thematic’ life history method to try and understand the lived experiences (as it is recollected) of the research participants from the beginning of the Maoist insurgency i.e., 1996 onwards up until now. Critical ethnography benefits from the utilization of life history as a relational approach, as it allows for the connection between macro and micro processes (Ojermark, 2007, p. 3). This is because individual lives are not discussed in isolation, but rather within the context of the socio-economic spheres. Analysis of this nature is a key component of this research. Life histories are also regarded as a ‘process of change’ capturing, for instance, a map of a person’s journey from a victim to a political actor (Ojermark, 2007, p. 3).

The life history conversations were similar to the interviews in that they constituted casual interactions allowing those being interviewed to share their personal life experiences and histories openly, especially on those accounts that researcher considers important with the support of familiar and contextual references. Multiple meetings were arranged with the participants, so that they do not feel rushed to complete their stories within a restricted time frame. At times and when needed, the respondents were probed with additional questions, directing them towards some issues of relevance to the research project.

3.4.4 Focus Group Discussions

Alongside the interviews with the victims of conflict, the researcher has also conducted focus group discussions. This enabled the researcher to understand some of the main research themes within the context of an intergroup discussion, allowing for the emergence of new and interesting insights and behaviors (Scotland, 2012). Using a script like the interview schedule, the research participants were invited to choose and discuss a particular topic that is of interest and priority to them. The group responses provided were not necessarily comprehensive or detailed, however, it enabled the collection of contextual information pertinent to the field site, as well as the identification of topics that may require further investigation through individual interviews. There were instances where individuals felt vulnerable or uncomfortable to participate in group discussions because of their discomfort with the subject matter and the prevailing context from the society that hindered them from honestly speaking the truth and how they feel about it. For example, a lower-caste woman from a remote village being interviewed among the local “so-called” high-caste and high-ranked men. These were very likely scenarios in the Nepali context; therefore, researcher tried to create a more ‘homogenous’ group (for e.g., wives of those disappeared during the conflict in Nepal) and invited the participants to discuss and articulate their concerns freely and openly.

3.5 Defining and Identifying Research Participants

The Interim Relief Program (IRP), which has been an integral component of the Nepali government’s transitional justice processes, defines ‘conflict victims’ as people from the household of killed, went missing or were internally displaced, those with physical conditions caused by injury and who lost their homes during the civil unrest (Carranza, 2012, p. 3). Although, the IRP has been marred by inconsistencies because in this

definition, sexually exploited and abused victims are not considered eligible, and there is state does not acknowledge violations of this nature during the conflict as victimized (Sajjad, 2016; Selim, 2017).

Due to this conflicting and discriminatory practices that the government has articulated for those that were affected during the civil war and afterwards, in order to define research participants, the researcher broadly adopted the United Nations's definition of victims -

Victims are those who are hurt both emotionally as well as physically either in a group setting or personally including those that have encountered financial loss or loss of their basic human rights caused by actions that violate the standard global human right laws (Human Rights Office of the High Commissioner [OHCHR], 1985).

3.5.1 A Brief Overview of Social Stratification within Nepali Society

Before describing the primary research participants of this research, it is important to mention about the prominent caste system of Nepal in which the society is divided and sub-divided into groups that belong to various castes and ethnicities. Amongst the different groups, Brahmins and *Chhetris*, the highest caste groups within the Hindu caste system, represent just under 30 percent of the population, while *Dalits* (untouchables or lower caste group) represent approximately 13 percent (Central Bureau of Statistics [CBS], 2012, pp. 146-164). Similarly, indigenous ethnic people (*Adivasi Janjatis*) and a heterogeneous group of people living in southern plains (*Madhesis*) each constitute approximately a third of the population (CBS, 2011, pp. 146-164). Several of these broad identity categories tend to overlap (for example, it is possible to be both a *Madhesi* and a *Dalit*) and each category is further sub-divided into distinct, hierarchical groups.

The hierarchies established by these social categories remain a major factor in determining the allocation of power and resources within Nepal. In particular, the political influence and economic opportunity have historically been largely restricted to a select few high caste Hindu families from the Hilly region. On the other hand, the ethnic, *Madhesis* as well as lower-caste groups from the remote mountain areas as well as the southern *terai* of the country face discrimination and marginalization. This is confirmed by the Human Development Index (HDI), which indicates that Hill Brahmin caste has the highest Human Development Index score of 0.557, while Madhesi Dalit caste has the lowest HDI score. Dalits and Muslims have surprisingly lower HDI values at 24 and 27 percent lower, respectively, compared to the Brahmin/Chhetri population (Government of Nepal, National Planning Commission & United Nations Development Programme, 2014, p. 18).

Post the 2006 political transition process, it was anticipated that there would be a need to reconsider the system of this caste division in the society and community engagement between Nepalese citizens and the state. This was especially true for the historically disadvantaged groups. However, the power imbalances entrenched in Nepali society for over centuries continue to remain pervasive and groups including women, *Dalits*, *Adivasi Janajatis*, *Madhesis* and people from remote regions remain in the margins of the society. In fact, the recent debates over identity's role in Nepal has led to increased fears of social polarization, tensions with the state, and possible communal violence in the future (Jha, 2017, pp. 65-66).

3.5.2 Research Participants for the Research

The primary participants of this research were members of the marginalized communities in Nepal who had been subject to conflict—particularly *Adivasi Janajatis*, the so-called lower-caste groups from the various regions of Nepal who were affected

by a decade-long civil unrest of Nepal and are still vulnerable due to various socio-economic discriminations.

While focusing on the marginalized groups, a range of variables including age, gender, physical disability (because of conflict) and access to victim groups/human rights NGOs were employed to gain a range of perspectives from within these communities. This is because individuals and communities have experienced armed conflict in Nepal in different ways, and thus, their requirements and expectations of justice may be different. For instance, men, women, and elderly are likely to have differing views on their experiences of the conflict and the effect it had on their lives, individually and collectively. Similarly, marginalized communities may have distinct understanding and expectations from the transitional justice mechanisms, based on their level of contact and access to the victim groups and human rights agencies.

To identify victims for the research, a list of contacts was generated based on the information made available by national and local victim groups, NGOs particularly human rights organizations and Local Peace Committees for a specific field site, as well as by referral from other victims during the fieldwork. An updated report published annually by the International Committee of the Red Cross (ICRC) Nepal that provides information on the missing in Nepal as well as any public documents on the victims were consulted. Selecting specific research participants from amongst the various sources of information has been elaborated in the sampling section.

Additional to interviewing these victims, researcher has also interviewed the following in order to make sure that both sides of the stories are heard to help bridge the gap between state level policies and the actual needs of the victims:

- 1) Representatives of Truth and Reconciliation Commission, Nepal (TRC) and Commission of Investigation on Enforced Disappeared Persons (CIEDP),

- 2) Representatives of relevant state authorities such as Peace and Reconstruction Ministry and National Human Rights Commission, Nepal, and Local Peace Committees,
- 3) International NGOs including ICRC and International Center for Transitional Justice (ICTJ),
- 4) National NGOs such as Nagarik Aawaz, The Story Kitchen, Women for Human Rights (WHR), INSEC, and
- 5) Furthermore, leaders of victim groups/associations such as National Network of Families of the Disappeared and Missing (NEFAD), Conflict Victims' Common Platform (CVCP) and Conflict Victims' Committee (CVC) have also been interviewed to solicit responses on the research questions.

3.5.3 Fieldwork Timeframe and Location

By adopting critical ethnography and using numerous research methods discussed above, the study took place in Nepal. The first phase of the research was conducted in Kathmandu – the capital of Nepal to a) building and establishing connections relevant for the study, b) preparing for next phase of the study that primarily included field visits for interviews, and c) conducting high-level interactions with stakeholders from the state and other relevant organizations. During the second phase of the fieldwork, primarily data was collected in Bardiya, a remote mid-western district of Nepal. Bardiya was primarily chosen for three reasons—the first being that the district was one of the most severely affected by gross violations from both the state army and the rebels during the conflict. It is reported to have experienced the maximum cases of missing people during the civil unrest with a total of 220 cases (Himalayan Human Rights Monitors [HimRights], 2011, p. 14). Secondly, Bardiya has a large *Adivasi Janjatis* population particularly *Tharus*, who account for 52.6% of the total district's population

of 426,576 (CBS, 2011, pp. 146-164). Third, it has a well-established victim association – CVC that closely works with the victims of conflict in the district, and the researcher had the opportunity to work collaboratively with representatives of the organization. The regions for the third phase of the field work were Bardiya, Chitwan, Kailali, and Kathmandu districts of Nepal. All four locations were chosen because of the maximum number of missing persons based on the provisional data of the CIEDP in 2019. The researcher carried out the field work for a period of thirty days in each of the four districts. For this field location, researcher looked to identify districts that were also significantly impacted by the insurgency and has notable indigenous ethnic population, although with no presence of any formal victim group or association and with limited access to human rights groups. Therefore, identifying and finalizing of the district happened after consultations with relevant victim groups, non-governmental organizations as well as other relevant organizations working, in some capacity, on transitional justice in Nepal. This helped data triangulation process because it enabled comparing and contrasting research findings between research participants who had strong connections with victim groups and relevant transitional justice organizations as well as those that lacked such connections.

Towards the end of the field work researcher shared some of the preliminary findings of the research informally to victim groups/associations including NEFAD, CVC and CVCP and their international counterparts working on transitional justice issues like ICRC, ICTJ and UN based in Kathmandu. Researcher also participated in relevant workshop and conference on transitional justice in Nepal where researcher could share research findings amongst a wider audience, including academia and transitional justice practitioners.

3.6 Method of Sampling

When it comes to qualitative research, the methods a researcher uses to select a sample have a major influence on the nature of the output of the study. One of the optimal sampling techniques is the one which a) naturally comes out of the research objectives, b) supports production of robust and quality data, c) enables to obtain distinct conclusions and explanations from the analysis, d) is ethical in nature and e) allows a clear connection of the output of the study with other relevant settings and studies (Curtis, Gesler, Smith, & Washburn, 2000, p. 1003).

In this study, the researcher has used purposeful sampling techniques for choosing the primary research participants of the research who are the victims of armed conflict. Coyne discusses his rationale and effectiveness of purposeful sample selection which is based on the idea of using cases that have plenty of information. These cases are those that provide a wealth of information on topics that are essential to research objectives, hence the definition of purposeful sampling (Coyne, 1997, p. 624). In a similar vein, Palys states that purposeful sampling focuses on why specific individuals (or groups) experience certain attitudes, the mechanisms from which those stances are formed, and how those attitudes determine the interplay within a society or an institution (Palys, 2008, p. 697).

3.6.1 Rationale for Adopting Purposive Sampling for the Research

Purposive sampling techniques were employed in this research for two primary reasons. Among the various purposive sampling methods, the snowball sampling technique has been the primary one used by the researcher for this study. The concept of this method relies on the notion of investigator's understanding of an entire population could form the basis for the selection of inquiries to be sampled (Polit & Hungler, 1997, p. 229). These presumptions are derived from the rationale of criterion sampling, which is to

examine and evaluate all cases that satisfy a pre-determined criterion of significance (Hasson, Keeney, & McKenna, 2000, p. 1010). In a similar manner, snowball is an approach that produces a study sample by soliciting referrals from individuals that have knowledge about those with certain features relevant to the study (Biernacki & Waldorf, 1981, p. 141). This approach is based on the idea of how well an investigator can determine the variables relevant to the study, which can then be used to identify and recruit respondents for the research.

The researcher started the data collection with the victim leaders from different victim led associations in Kathmandu and they further helped by giving the contacts and information of the focal persons in the research district. Bhagiram Cahudhary from Bardiya district who is also a victim leader was a very resourceful person to help connect with victims for this research.

At the more practical level i.e., field location, the first step is to identify and select research participants based on the sampling techniques adopted by the researcher. The second step was to find potential gatekeepers who know and can suggest individuals who will have the appropriate knowledge to become part of the study and meet the requirements in relation to the identified variable discussed above. For example, the CVC had consented to help the researcher to access research participants from the marginalized communities in Bardiya district. In addition to this, secondary data had to be obtained to help identify of the sample, for example, the report by ICRC on the missing in Nepal (as discussed earlier). Once identified, the potential participants were approached to recruit them for the study, be it for interviews, life histories or group discussions.

The details of the research sample size, including both the field locations, are summarized below.

Table 3.1: List of various research tools used on various participants whose numbers are shown on the right column.

Research Tools	Number
Semi-structured interviews	40
Life histories as Narratives	12
Informal group discussions (with 8 participants in each group)	4
Total	84

Table 3.1 presents research participant numbers using appropriate research tools applied in this research. Data were collected using the above-mentioned tools such as semi-structured interviews, life histories as narratives and informal group discussions with the families of enforced disappeared persons in four districts respectively- Kathmandu, Bardiya, Chitwan and Kailali. For the semi-structured interviews, 10 participants in each district were used, narratives of 4 individuals were collected in each district and 4 informal group discussions were held with 8 participants in each group.

3.6.2 Validity, Reliability and Triangulation in Research

It is interesting to note that the dependability of any qualitative research lies within an appropriate interpretation of quantitative research and for which, there is a significant connection for reinterpreting the ideas to meet its needs (Golafshani, 2003). Several researchers have come up with their own interpretations on how the nature of data from qualitative research can be appropriately analyzed. For instance, interpretivists like Guba and Lincoln stress that, ‘credibility’, and not the ‘validity’ of the knowledge should one look for and similarly, understanding of information from data should be viewed as dependable (Costantino, 2008, p. 5). Similarly, they also examine the

importance of 'trustworthiness' in ensuring the reliability of a qualitative study and argue that it determines the confidence of a research study (Cohen, 2007; Lincoln & Guba, 1985).

Now, the triangulation strategy is usually chosen to reduce the influence of several factors and use conventional techniques that are compatible. Mathison (1988) argues this point by discussing methods of interpretation that reduce such bias (p. 13). Denzin (1994) proposed four distinct approaches to triangulation for qualitative research that constitute data, researcher, principles, and techniques.

Along the lines of what Lincoln and Guba have articulated, validity and reliability of this research go beyond the inherently positivist position and incorporate relevant measures for quality assurance, credibility, validity, and transferability of the output of the study. For accomplishing this, the researcher has used a range of approaches including Denzin's data and methodological triangulation, low-inference descriptors and sharing preliminary research analysis and findings to victim groups/associations including NEFAD, CVC and CVCP. At the core of all these methods is the researcher's self-consciousness, which is the understanding of how the investigator contributes towards formation of concepts in the study (Nightingale & Cromby, 1999, p. 228).

It is to be noted here that since the researcher has adopted constructivism, use of data and methodological triangulation strategies are the most appropriate to record the context and social construct of the participants. Therefore, for data triangulation, researcher visited three different locations/districts (Bardiya, Chitwan and Kailali) in Nepal to conduct fieldwork and compare research findings between research participants.

For making sure that the outputs of the study are credible, the investigator has utilized a substantial number of direct quotes from research participants to ensure that the

analysis accurately reflects the opinions of those involved in the research field. To add, being a Nepali national and native Nepali speaker and having working knowledge of local languages like Aawadhi and Hindi (spoken in Bardiya) helped investigator to have greater insight of the content and context being studied and allowed to naturally engage with research participants without altering the flow of the interaction. To sum up, choosing various resources for collecting data with diverse participants in various geographical setting not only yields comprehensive data, but also guarantees successful triangulation given the difficulties associated with the reliability and validity of this type of research.

3.6.3 Approach to Data Analysis

From amongst the various approaches that social science researchers use for analyzing their qualitative research, the researcher has adopted qualitative content analysis, specifically inductive content analysis, for the research. While within qualitative content analysis, there are a range of analytical approaches described, researcher particularly prescribe to those scholarly articulations that make strong arguments on subjective analysis and interpretation of text data within contexts, with an understanding that text involves multiple meanings (Elo & Kyngäs, 2008; Graneheim & Lundman, 2004). Although qualitative content analysis is ‘less standardized and formulaic’ (Hsieh & Shannon, 2005, p. 1277), it has been extensively used in health and education research and is now increasingly being applied in other disciplines, including sociology and business.

Qualitative content analysis is characterized by its adaptability, although those critical of this technique argue that it is a simplistic technique, which can be subject to ambiguity and is largely dependent on the researcher's interpretation.

The researcher has used the inductive content analysis because as a qualitative method focused on recorded communication, content analysis is often the most appropriate for this study that is determined by the changes and patterns in communication around social, economic, and political issues. These patterns were extracted from analyzing recorded communication from the victim narratives during interviews with them. The approach is inductive because the researcher has identified important themes and sub-themes from the transcribed audio recordings and notes from the interviews with the victims. For example, the researcher was able to track participants' sentiments, which could sometimes be masked through silence, sighs, and gestures. The focus here is on the implicit data or the information interpreted from looking at how certain words or phrases are in relation to others within the narratives of the victims.

For the transcription work, the first step was to translate the audio recordings of the interviews that was conducted in Nepali language to English. The researcher was aware that this step was very critical and sensitive so that extra care was taken while completing it and was conducted in multiple iterations in order to make sure that the translations were as precise and unambiguous as possible. For those typical words or phrases that did not have word-to-word translations in English, the researcher has used the most accurate interpretation without muddling the actual description. Next, the researcher examined the translated and transcribed interviews to look for themes and patterns that would yield appropriate data pertinent to the research.

3.7 Ethical Discretions

Ethical discretions are integral part of any research including those related to social context, where interactions between researchers and participants to understand social phenomena within contexts raises several ethical dilemmas and concerns. For this study, which relies on critical ethnographic method, the researcher has considered all

the ethical ramifications that relate to any research project as per the ethical guidelines of Tribhuvan University.

3.7.1 Participant Information and Informed Consent

A fully informed consent or decision as to whether individuals would want to be a part of the study is integral to the researcher's ethical consideration. For this research, a participant information sheet has been provided to potential research participants, which included brief details on the research, understanding on voluntary participation and withdrawing procedures, confidentiality and anonymity of information, and data storage and dissemination plans. For example, they were told that their involvement is totally voluntary, and they get to choose if they want to get involved in this research project. Even when they agreed to participate, the researcher made sure that they understood that they were allowed to leave and not participate at any time during the interview or group discussion and even afterwards if they changed their mind.

While it is important for individuals to know what research they are participating in, it is just as important for them to know what they are consenting to. Most of the primary research participants (victims of conflict) were illiterate or semi-illiterate; therefore, requesting for written consent can itself prove unethical. Therefore, researcher used verbal consent script template that researcher read out and record on the phone along with the participant information sheet to obtain participant's consent before proceeding with any interviews or discussions. The researcher also seeks permission before making any audio recordings and taking any photos.

3.7.2 Confidentiality and Anonymity of Information

Before recruiting any research participants for this research, the researcher informed them about how their information and what they shared would be kept anonymous. The participants' names and locations were anonymized, and all data related to them were

kept confidential so that they are less likely to be identified from the data. Researcher, however, created a spreadsheet using code words that included numbers and letters for keeping track of various social stances such as age and gender that were needed for analysis during a later phase.

3.7.3 Minimizing Harm for Research Participants

During the fieldwork, the most important challenges were to make sure that the participants would not have any breakdowns during the interviews. Most of the participants would have been directly or indirectly impacted by armed conflict. After the CPA agreement between the Maoist party and government with the armed conflict ‘officially’ ending in 2006, there is a little immediate concern about their physical safety.

As far as emotional wellbeing of the research participants was concerned, it was obvious that remembering and sharing personal stories brought back painful memories and caused distress to them. During those confrontations, the researcher immediately stopped taking the interviews and explained that they were free to leave any time and discontinue with the interviews without a need to return at a later time. Researcher also expressed solidarity towards the injustices that the participants have suffered during the conflict, although researcher again clarified her role as a researcher. Additionally, the researcher ensured that she scheduled discussions with the victims of conflict during times that worked best for them but not to herself.

The methodology chapter addresses the key philosophy of the research project (constructivist/interpretivist) and its proposed methodology (critical ethnography), including the research methods adopted during the field work and its implementation. In summary, this philosophy encourages deeper understanding of the multiple realities of this research’s participants based on their lived experiences. Similarly, using critical

ethnographic methodology enables understanding of contextually rich perspectives from 'below' i.e., need for participations for sharing life experiences and the view of discriminations that form the basis of research objectives. This methodological approach and its research outcomes can potentially challenge the dominant, legally driven, and elite-centric transitional justice practices in Nepal and in the global discourse.

The chapter further examines research techniques for gathering and analyzing data for purposes including conversations and semi-structured interviews, life histories, informal group discussions and participant observation, the choice of which was built from research objectives. The chapter defines the primary research participants for the project as the victims who have experienced socio-economic discriminations. It is argued that their participation in the research helped to capture nuanced understanding and experiences of victimhood and agency, which are rooted in exclusionary system and persisting ethnic, caste and gender-based disparities within the Nepali society.

Additionally, the chapter discusses the rationale for adopting purposive sampling techniques and inductive content analysis for the research. Emphasis is placed on articulating validity and reliability of the research beyond the positivist construct by using data and methodological triangulation approaches to the appropriate research output is achieved. Towards the end of the chapter, ethical considerations pertinent to this research are discussed including participant information and informed consent, confidentiality, and anonymity of information, minimizing harm for research participants, data management and protections and others.

CHAPTER 4: APPROACHES OF TRANSITIONAL JUSTICE

In this chapter, the researcher has explained about the approaches of transitional justice in the global scenario and eventually linked it with the case of Nepal. This chapter discusses truth commissions as one of the prominent approaches of transitional justice around the world, particularly in the countries that have been through armed conflict and atrocities, and examines claims made in their defense. Nepal has also established two commissions-Truths and Reconciliation Commission (TRC) and Commission on the Investigation of Enforced Disappearances (CIEDP) to look after the human rights abuses occurred during the ten years (1996-2006) of armed conflict. This chapter examines the roles and efficiency of these two commissions.

4.1 Primary Goals of Transitional Justice

The explanation of purpose of transitional justice is implied instead of clearly stating its principles and applications. From the point of view of survivors of civil unrest and abuses, justice is not only a form of reparation for the crimes committed but also as an approach that would help recover the wounds and build a peaceful and prosperous outlook (Lambourne, 2011). Despite this, only a small number of transitional justice scholars contemplate peace and reconciliation objectives, and their research remains largely focused democratization, law, and order instead of actual peacebuilding.

Post conflict justice, compensation, and reconciliation are challenging and often take years to accomplish. However, human rights violations that go unchecked lead to social unrest and often fuel renewed violence. Transitional justice mechanisms constitute recognizing, charging, amending, and forgiving wrongdoing during the transitional time of post-conflict or post-authoritarian state reconstruction. This process is essential for building sustainable peace and functioning states. It is essential to recognize the

differences in situations for various societies that have experienced conflicts in some way and necessitates differing approaches to resolving the grievances. However, knowledge of other societies from other parts of the world and their experiences with relating challenges of conflict justice could assist in designing and implementing an effective transitional justice approach. But transitional justice in any case should be contextualized and localized as the nature of the conflict and the population and structures it affects at different regions of the world or in different countries might be very different. Regardless of the type of violence, similar queries arise in the aftermath of past atrocities: How can an emerging democracy integrate supporters and victims of a past regime? How should an emerging democracy approach justice and reconciliation? What about war crimes and truth-seeking? Many countries grapple with these questions, and their answers can have far-reaching political, legal, social, and economic consequences.

Different approaches have been implemented in a variety of ways across many countries to facilitate post-conflict transitional justice process. Experiences have demonstrated that transitional justice approaches work best when applied in conjunction with a comprehensive approach: judicial measures such as trials and legal reform, in addition to non-judicial measures including truth commissions and compensation programs, can and should be complementary. Previous research also highlights some of the challenges that societies face as they seek to build their society and state while dealing with the consequences of the past: who should be held responsible, how victims may be satisfied, and how security and justice sector structures can be reformed.

As stated by Lawther and Moffett (2023), the transitional justice goals are:

- a) instituting what actually happened,

- b) admitting and recognizing grievances,
- c) making sure that those responsible for atrocities are brought to justice,
- d) reparations,
- e) making sure future abuses does not occur, and
- f) taking every steps for ultimate social revoery.

Acknowledging that this is a challenge, the handbook goes on to outline the various strategies that have been adopted in transition countries to tackle each of these issues.

These include:

- a) institute and conduct legal proceedings against perpetrators,
- b) establishing commissions,
- c) instituting effective and efficient compensation programs, and
- d) establishing a process for terminating abusive state officials.

4.2 Transitional Justice Approach: Global or Local

Tensions between international and local transitioning approaches have been around for both practitioners and researchers. The tensions have been reflected in a range of discussions, such as how much impunity can be tolerated to bring conflict parties to a bargaining middle point, how much “universalist” principles (i.e., human rights) are capable of responding to specific requirements and nuances of diverse post-conflict regions, and how retributive and restorative justice can appropriately be culturally reconciled.

4.2.1 Global Approaches of Transitional Justice

a) United Nations Approach

The Secretary-General’s Guidance Note of March 2010 sets out the fundamental principles and guidelines for UN’s work is based on its approach to Rule of Law

Assistance (UN. Secretary-General, 2010). This definition refers to the entire procedures and systems that are involved in a community's efforts to recover from past abuses, hold perpetrators accountable, provide justice, and foster reconciliation.

b) European Union's Approach

The above definition is also the one currently the most widely used by the European Union (EU) and includes the four essential components of transitional justice (European Union, n.d.) which include justice, truth, reparations, and guarantee of non-occurrence.

The four components are included in the current global understanding of the transitional justice approach. These guidelines provide direction for the EU's transitional justice strategy, with the aim of achieving the following objectives: making sure the unrest does not occur again, dealing with extremely grave crimes of international concern, and preventing any such crimes to occur thereafter:

- i. Dissolving exemption from punishment:** Righteousness for those who have been affected by global human rights violations cannot be obtained unless those responsible are brought to trials and punished. This requires efficient lawful system, both domestically and internationally, that give the victims of crimes a chance to participate and be likely heard. Prosecution also ensures perpetration of such criminal activities thereafter.
- ii. Admitting and recognizing grievances:** Transitional justice involves recognizing the harm suffered by victims. Acknowledging the suffering is not sufficient. Rather, it is necessary to recognise that victims possess rights which include but are not limited to efficient redressing and appropriate compensations. The transitional mechanisms must also make sure that victims are not victimized or traumatized again.

- iii. **Restoring confidence:** The purpose of the transitional justice approach is to foster trust in the state's organizations and to reaffirm the social values that any violation or abuse will not be condoned or repeated. This helps to restore the community structure of a society.
- iv. **No one is above the law:** The implementation of transitional justice must ensure restoration of law. Reinstating laws is not just about reforming laws and institutions; it is about ensuring that no one is ever above the law; that the judicial system has accountability; and that individuals have access to appropriate justice. This point is especially important because transitional justice procedures often are implemented in places where the law has not been upheld at all, or where it has been seriously breached during conflicts.
- v. **Helping reform:** A transitional justice system that fights war immunity, recognizes those that have suffered, creates law and order, and builds confidence also seeks to promote the reconciliation process. The goal of coming together as a society is to redefine how people are connected and to help community transition from a fractured past to a unified future. Reconciliation will not be obtained only from law and institutional measures. It may additionally be necessary to consider initiatives that focus on the personal aspect of the transition, such as formal apologies, memorials, and educational reform. It is to be stressed, however, that reconciliation should never be viewed as a substitute for justice, nor should it be seen as an objective that can be attained without fully utilizing all four components of transitional justice, which are outlined in greater detail next. In addition, although transitional justice forms basis for the reconciliation process, other elements including safety and building, play significant roles in the process.

4.3 Transitional Justice Approach in Nepal

In 2006, majority of Nepali were new to the concept of transitional justice, and they had just started learning about it. This raised the question of whether transitional justice could be implemented in Nepal to ensure that the perpetrators of civil unrest were brought to justice and punished. The term is now used to refer to a process or series of practices that address past abuse for obtaining goals such as determining the truth of the incident, recognizing the pain suffered by victims, punishing perpetrators, compensating victims for damages, preventing future abuse, and promoting social healing (United States Institute of Peace, 2017).

A variety of mechanisms exist, some of which are judicial, including tribunals, while others are non-judicial, including trauma-relief programs, reconciliation initiatives, reparations, or memorials. Transitional justice, regardless of its form, has the same underlying principle: addressing the past will ensure that the future does not suffer from wounds that impede the establishment of peace and security. The logic behind this approach is reasonable, however, the magnitude of the challenge is immense; the process of rebuilding a society after atrocities and abuses is almost always a difficult and lengthy process. Therefore, there is an argument that those who crafted the CPA were uncertain about what transitional justice is and how difficult it is to implement. And while some critiques question whether the CPA signatories really wanted it to happen, there is no question that they were ready to sign onto an ambitious peacebuilding. In addition to advocating for politically reorganizing the country and forming a new constitution, the CPA also proposed progressive provisions for the TRC. The objective of the commission is to foster a climate of reconciliation in society by investigating those who have been implicated in gross violations and serious criminal acts during the civil unrest.

4.3.1 Criminal Prosecutions

An anonymous respondent in Dhangadi stated to the researcher in 2018 during a field interview “I wish to get justice and I wish the commission investigates and punishes the one who disappeared and killed my son.”

The expectations of the victims and the national and international organizations have not been met with regards to the transitional justice in Nepal. We see very little or no interest for criminal prosecutions in Nepal’s transitional justice process, rather the current (TRC) bill is for amnesties, which is why it is accounted to be amended with the Supreme Court’s verdict to change the existing Truth and Reconciliation Act of Nepal. The lack of interest in criminal prosecution is due to the political interest of the actors in the then conflict. As far as the negotiations on peace is concerned, it is often assumed that the granting of reparations for certain criminal offences will lead to national reconciliation. Currently, Nepal’s TRC Act includes clauses both on pardoning and the national agreement, but the Act does not explicitly link the possibility of recommending amnesty to its reconciliation provisions.

An amnesty prevents future prosecution for certain crimes committed prior to the implementation of the amnesty. In general, an amnesty applies to crimes committed during a certain period or in connection with a specific event, such as armed conflict (Human Rights Office of the High Commissioner [OHCHR], 2006). Amnesties also often relates to specific individuals or groups, such rebels from the armed opposition or state armies and officials. Three distinct categories of amnesties exist which include self-amnesty, blanket amnesty, and conditional amnesty. Self-amnesty refers to amnesty act in which the alleged perpetrators adopt in order to immunize themselves from criminal prosecution. A blanket amnesty is generally understood to be applicable to all individuals belonging to certain categories (e.g., rebel groups and state armies),

does not usually provide a method to figure out the eligibility, and does not impose any conditions on the recipients. In the case of conditional amnesties, the offender is required to comply with the conditions specified in the amnesty law prior to being eligible for an amnesty.

In accordance with international law, an amnesty cannot be granted in the event of a crime committed during a war, a crime against humanity, a genocidal act, or torture. In addition, the obligation to provide remedial measures under international law renders an amnesty unlawful if other serious violations of human rights have occurred.

The first stage of transitional justice focused predominantly on the establishment of International War Crimes Tribunals, specifically the Nuremburg trials and included ‘back-of-the-envelope’ approach of applying human rights laws and standards to past behavior (Sharp, 2013, p. 154). Stage two, however, was marked by prosecution at the national level in countries that had emerged from oppressive regimes and were on the path to democratic political transformation. The most significant part in this phase was the discussions on ‘peace vs. justice’ and ‘truth vs. justice’, which dealt with the conflict between moral, political, and legal issues in transitioning societies (Bell, 2009, p. 321; Leebaw, 2008, p. 91; Paige, 2009, p. 85).

The Peace versus Justice debate focused on the question of reconciling conflicting moral imperatives, reconciling the legitimate aspirations for justice with the equally legitimate aspirations for stability and social tranquility during periods of transformation (Paige, 2009, p. 323). As a scholarship, transitional justice was in a contradictory position because on one hand, it sought to create a sense of normality in post-regime states and on the other hand, it uncovered the mass atrocities of the past (Nagy, 2008; Teitel, 2003). The discourse, for this reason, often was accused of ‘opening up old wounds, creating political instability and obstructing progressive

political development' (Leebaw, 2008, p. 96). A pertinent moral question was, "should we punish people for their past acts of violence?" Or "amnesties are necessary in fragile societies to keep peace?" These moral conundrums were even more difficult to deal with in practice. In countries such as Argentina and Chile that emerged from military rule in the 1980's and 1990's, former rebellions were offered amnesty. During this process of democratization led by the elite, this was seen reasonable for establishing peace, since the trials as well as prosecutions of army officers had caused serious turbulence in those states.

The Truth versus Justice discussion highlighted the complexity of reconciling the demands of law, retribution, and rehabilitation in a period of transformation (Paige, 2009, p. 353). This raised the question "How can retributive justice be reconciled with other forms of non-judicial accountability?" Consequently, commissions on truth were initially thought of as an essential element of transitional justice, as they could potentially uncover the truth and counteract the denial culture in the short term, while also contributing to the reconciliation process in the long term (Fischer, 2011, p. 410). However, they were also viewed as a tool that enabled the offender to evade punishment and gave 'political backing' to amnesties (Thoms et al., 2010, p. 343). As a result, primary focus of these discussions emphasized on contrasting Truth, Peace and Justice and viewed them as difficulties as well as compromises associated with the pursuit of justice during a transitional time, while struggling to explain the reasons for these structures to be viewed as complementary and mutually reinforcing. Now, the final stage of transitional justice marked the elaboration and normalization of the discourse, repositioning its concept from something of "exception" to "standard" (Teitel, 2003, p. 71). It transitioned from its peripheral context to become mainstream in a post-war landscape in which the question of transitional justice has increasingly shifted to the

question of if it should be implemented and not if it was needed. (Nagy, 2008). An argument can be made that such assertion can be problematic because the fundamental questions like ‘who’ and ‘what’ is ‘transitional justice for?’ are no longer considered applicable, rather the transitional justice interventions are accepted as normal and necessary (Nagy, 2008; Sharp, 2013). Ultimately, transitional justice might question, how else would we deal with the past injustices without the use of transitional justice procedures?

4.3.2 Reparation and Compensation Program

Nepal’s Comprehensive Peace Agreement and Interim Constitution of 2007 provide for different transitional justice procedures and practices in order to make sure that justice for human rights victims of decade of armed civil unrest in Nepal is achieved. As many as thousands of people were killed, hundreds went missing, and tens of thousands were rendered disabled, injured, tortured, or displaced during the conflict. The Government of Nepal (GoN) launched the Interim Relief & Rehabilitation Program (IRRP) in 2008 as a priority program with the objective of providing monetary assistance and other relief support to the conflict victims. The GoN has implemented a number of peacebuilding initiatives, including the establishment various committees and organizations such as the Ministry of Peace and Reconstruction (MoPR) which have been instrumental in the implementation of the IRRP. It is also noteworthy MoPR was reliant on state agencies in the district and other local offices for implementation because they lacked their own offices and working spaces in those areas. Even though it is referred to as the IRRP, this initiative incorporates some elements of the reparation program that cannot be treated in isolation. This program provides assistance, relief, and benefits to a wide range of conflict victims, including families, widows, and children of those that were killed or disappeared during the civil unrest and for those

that were disabled including those who lost their homes during the war (OHCHR, 2005; 2008). However, there are considerable gaps within the existing victim categories and benefits that exclude essential victim groups including those affected by gross abuses. Moreover, there is limited evidence of explicit gender sensitivity considerations at either the policy or implementation levels. Furthermore, evidence indicates that victims, women, and other vulnerable groups were not consulted extensively when designing and implementing the program.

The MoPR's IRRP did not represent or substitute the full-scale redressing a requirement that do more the compensating the victims including additional essential reparation components such as justice, truth, self-satisfaction, and guarantee of non-occurrence. While the IRRP focused more on the compensation, it does give victims some recognition for their loss and suffering.

According to the primary data collected for this research, victims faced challenges while receiving interim relief. 1) One of the challenges victims faced was, they did not get the money, but they received in an installment, mostly they received in three installments. For the initial two installments they received one lakh and later they received the remaining. Their perspective in this is, it would have been better for them if they had received the money at once so that they could invest that money for income generating or even support for children's higher education. 2) The second challenge they faced was division of the relief money. In case of killed and enforced disappeared, if they were married, their spouse was liable to receive that money. But the parents of the killed and enforced disappeared also claimed to get the money, there were conflict raised due to this issue. Later the money was divided among the spouse and parents.

4.3.3 Truth Commissions

With the emergence of global democratizing wave from late 1970s to early 1980s, a novel institutional response to the injustices and evils committed and supported by predecessor regimes. For instance, truth commissions of Latin America as well as Africa emerged as an alternative to both full criminal prosecution and unconditional amnesty. Proponents of these institutions argue that, if the emerging constitutional government wants to avoid muddying themselves from what occurred during the war in addition to being accepted and trusted by the people, they must recognize and disclose past crimes. It is argued, however, that a full-scale prosecution through criminal proceedings would be just as detrimental to the emerging constitutional government, as it would lead to hostility and division.

Since the mid-1970s, more countries than ever before have tried to move toward democracy. But one of the biggest challenges many of these countries have faced is how to bring diverse communities together after decades of conflict. Truth commissions are regarded as essential for social and personal healing since at least the early 1990's and have been established and implemented for building peace in any global as well as local unrest that have taken place and ended thereafter. Proponents of these commissions as well as other war crime tribunals assert that a reflection on what happened during the war is essential in order to make sure that the war opponents become optimistic about a more harmonious future together.

This chapter discusses that the transitional justice mechanisms can be established and implemented by forming appropriate truth commissions around the world for examining claims made in their defense. They are no longer perceived as weak alternatives to trials, but rather as having distinct benefits and being better than trials in certain aspects.

Truth commissions are not a court of law. Instead, they are a body created to examine cases of gross violations of human rights committed not only by the army and rebels but also by the state during the armed conflict period. Truth commissions' main objectives are to accurately document the perpetrators of murders and disappearances during the civil unrest to make sure that the truth is documented and included in the common history of a nation and facilitate the process of national reconciliation.

Nepal has also established two commissions-Truths and Reconciliation Commission (TRC) and Commission on the Investigation of Enforced Disappearances (CIEDP) to look after the violations of human rights that took place from 1996 to 2006 of armed conflict. It hasn't yet been clear if these commissions would take a holistic approach to deal with the issues or only focus on one or two approaches of transitional justice.

The next chapter discusses more in detail about the transitional justice process of Nepal and about the truth commissions as one of the main approaches adopted by the country. This chapter discusses a little more in detail about the truth commissions as it has been found that they form an important mechanism and procedure of implementing transitional justice in the countries been through armed conflict and atrocities.

4.4 Characteristics of Truth Commissions

Truth commissions typically constitute entities established to scrutinize and examine history of gross violations of human rights in a nation and such violations may involve those that committed by the state forces, governmental institutions, or rebellion groups. Hayner (1994; 2001) presents following four-fold primary attributes to any truth commission:

- a) They emphasize on what occurred during the civil unrest and aftermath of it.
- b) They examine human rights violations and abuses over a range of time instead

of just focusing on single incident. These commissions must comprise of the scope of inquiry, including the duration as well as nature of abuses and violations to be examined.

- c) A truth commission is an entity that operates on a provisional basis, typically for a term of up to two years and concludes by producing a final report at the end of the period. These parameters are prepared well ahead when the commission is established and may be extended for making sure that it has finished its work in a full extent.
- d) Fourth, truth commissions are subject to official sanctioning, authorization, or empowerment from the government. In essence, this allows better approach to information, better safety measures, and high-level assurance to make sure that the conclusive reports of the commissions are taken seriously. Such sanctioning is essential as it conveys an acknowledgement of past grievances and an obligation to fix the problem and focus on normal social living.

CHAPTER 5: NEPAL'S TRANSITIONAL JUSTICE PROCESS AND APPROACHES

In this chapter, the researcher has discussed the approach of transitional justice in the context of Nepal that has been intended to look after the issues of atrocities and human rights abuses during the ten years of armed conflict (1996-2006). This chapter elaborates on how the transitional justice mechanisms have addressed the victims of enforced disappearance among various categories of victims of armed conflict in Nepal. It also provides details on some of the challenges faced by the truth commissions in Nepal and the involvement of the state government and various other human rights organizations in implementing transitional approach in Nepal.

5.1 The Nepali Context

An anonymous respondent in Chitwan stated to the researcher in 2018 during a field interview:

I do not trust the state that it will address our issues; they do not have the political will to listen to the victims. They fear that they might be prosecuted if there will be proper investigations, so they want to be on the safe side and do not want to support for impartial and independent transitional justice process.

In Nepal, a process of democratization that began in the 1990s eventually degenerated into ten years of armed civil unrest. Thirteen days after the forty demands were submitted to the government, the Communist Party of Nepal-Maoist (CPN-M) party declared and launched a war against the government on February 13, 1996. This violent political movement was founded with the aim of overthrowing the unitary, hierarchical, and monarchical power structure of the centralized state. They pointed to the fact that the new regime established after *Jana Andolan* and successive governments since 1990

had failed to bring real democracy and inclusive development to the Nepalese people. They argued that only an armed revolutionary struggle could lay the foundation for overthrowing and replacing the corrupt and inefficient ruling classes with a popular democratic Republic that would represent the workers and peasants of Nepal (Hachhethu, 2003).

Maoist armed rebellion was fueled by the prevalence of widespread poverty, structural inequalities, and the characteristics of a feudal, centralized, and exclusionary state. Maoists declared their intention to liberate Nepali people from all forms of exploitation and repression (Hachhethu, 2003).

The Maoist insurgency eventually spread throughout the nation, resulting in the deaths of thousands of individuals and the establishment of a reign of terror with serious violations of human rights. It was accompanied by destruction of infrastructure, hindrance to economic growth, and a shift in resources from social services to military expenditure. The king, parliamentary parties, and Maoists were the main players in the conflict. The state forces, initially the police, then the state army after November 2001 fought with the People's Liberation Army (PLA) on the battlefield. The other secondary actors included sister organizations such as teachers, students, and labor organizations, in addition to intellectuals, journalists, and peasants who supported either the Maoists or the government side in the armed struggle. There were also government representatives at local levels such as police, village development committee secretaries, and sometimes other government representatives (Hachhethu, 2003).

5.2 Transitional Justice in the Past

Two commissions of inquiry were set up in 1990 under the leadership of Krishna Prasad Bhattarai, the prime minister of the 1990-91 Interim Government of Nepal to investigate the alleged cases of severe human right violations and abuses that took place

during the period 1961 to 1990, commonly referred to as the "panchayat period". The initial commission was dissolved shortly after its formation; the commission chairperson was perceived as having collaborated with the previous leadership and hence regarded as untrustworthy, resulting in the resignation including the two other members of the commission, who were also the representing human rights organizations. Subsequently, a new commission was formed with members representing human right organizations to investigate the cases of disappearances during the Panchayat period and to know about their whereabouts. The primary goal of the commission was to investigate and determine the last locations of disappeared as well as identities of the those who had suffered. Although the commission was able to investigate about a hundred cases, it did not have the authority to publicize those responsible for gross human rights violations or bring them to judicial trials, and the state forces did not usually respond to the inquiry of the commission. In 1991, the commission issued a two-volume report. Human right organizations including Amnesty International called on the state on multiple occasions to publish the report and bring those responsible for human rights violations to justice. The report was made public in 1994, but only a handful of its directions and advice were brought into effect. The government set up an independent and more popular commission in 1990 to inquire about the abuse and violations of the movement which occurred over a period of two months in the beginning of 1990. Known by Mallik Commission, which was named after the judge leading it, it came to a conclusion reporting 45 individuals had been killed and about 23,000 had been injured in that period of two months. However, none of the reports resulted in criminal proceedings against the alleged perpetrators.

5.3 The Civil War

During the first few years of Maoist insurgency in Nepal, over 1200 (this number

constitutes about 65% of the total police stations in the country) police stations around the country were closed due to the attacks by the rebellion Maoist group, or because of the withdrawal of police personnel for security reasons (Human Rights Watch [HRW], 2008). On 23 November 2001, Maoists pulled out of the peace accord and strike the state security posts in 42 districts, resulting in the death of at least 30 military personnel and 50 police officers. The government not only announced a nationwide emergency state on 26 November and mobilized Royal Nepalese Army (RNA), now known as Nepal Army (NA) but also established Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), that allowed state forces to have wide authority to apprehend individuals engaged in terrorism. The ordinance also identified CPN-M as a “terrorist organization”.

The involvement of the National Army did not significantly suppress the rebellion, but it did increase the civilian deaths during the civil war. The Informal Sector Service Centre (INSEC), a human right group in Nepal, reported that more than 13,000 Nepalese lost their lives in the conflict. More than 8,000 deaths, mostly of civilians, were reported after November 2001 when the army entered the conflict. The military was unable to occupy areas beyond their barracks, so they conducted regular sweeps into areas frequented by Maoists, often in retaliation for strikes by the rebellion group, most often apprehending and torturing civilians since the rebellions would have already been gone from the area prior to the military's arrival. Nepal Army's actions demonstrate that their tactics were not intended in favor or of the local community, but rather to create a sense of fear among the people of the community. The state police and the Armed Police Force were combined in November of 2003 and brought under Nepal Army's command to combat the rebellion group (HRW, 2008). Following this, the level of human rights violations rose significantly. According to the United Nations,

Nepal had the largest annual rate of human disappeared cases in the world between 2003 and 2004 which included a total of over 1600 cases of disappearances during that period. Both the CPN-M and the state forces were responsible for gross human rights abuses and violations. On 1 February 2005, the then king of Nepal, Gyanendra Shah announced emergency state and assumed full executive power with the support of the army, claiming that the civilian government had not been able to bring the rebellion conflict situation under control. His regime arrested several social protestors, reporters, and representatives of human right organizations and initiated stringent limitations of social freedom.

5.4 Comprehensive Peace Agreement (CPA) and Transitional Justice

After months of negotiations, the CPA was underwritten on 21 November 2006 between the state of Nepal and the rebellion the CPN-M party. This agreement consolidated a number of commitments from prior accords and incorporated several global commitments to human rights. This agreement pledged to foster a climate in which Nepalese people can enjoy their fundamental rights and freedoms, and to ensure that these rights are safeguarded in the future in the event of any violations (HRW, 2008). The parties also agree to publish the whereabouts of those who were “deceased” or killed in the course of the conflict by the end of two months, as well as to establish a high-level TRC. United Nations Mission to Nepal (UNMIN) was established in Nepal in early 2007 and had a limited political mandate with primary focus on assistance to plan, prepare, and conduct elections, and monitoring aftermath of the conflict era.

The establishment of CPA fostered optimism that the human right situation in the country will continue to improve, similar to the post-ceasefire period. As the year 2007 progressed, however, it became increasingly clear that the state, including the police, had limited capacity to safeguard the lives and safety of the population, particularly in

Terai, where Madheshi protesters began a sometimes-violent campaign to end discrimination. At times, demonstrations in the Terai turned violent. According to OHCHR, from January to October 2007, more than 130 civilians were killed, mostly in *terai* regions of the country. Those that were killed were mostly from the Madheshi Rebellion Opposition Party. In other parts of Nepal, particularly in the hilly and mountain areas, the umbrella branch of the CPN-M party, the Young Communist League (YCL) assumed public security duties from 2007 onwards. As a result, they were implicated in a range of criminal activities, which in some cases resulted in torture, and extremely gross abuses and violations of human rights (HRW, 2008). The armed conflict negotiation has been severely affected by the governing parties' inability to implement a significant number of provisions of the CPA and also due to the lack of addressing the concerns of those that were discriminated on the socio-economic basis. In the context of the NA's continued power and influence, the political parties have also neglected to address security sector reform. The Maoists withdrew from power in September 2007, leading to the postponement of elections to a constituent assembly. The major parties together, which also included the CPN-M, announced Nepal as a republic state in December of 2007 and would be made official during the inaugural constituent assembly to be held after the April 10, 2008, general election. There was also a reiteration by the major political parties to form the TRC and the CIEDP.

The CPA did not explicitly use the term “transitional justice”, but it did commit to setting up a High-Level TRC to investigate the atrocities during conflict, to make sure that victims received assistance, and to facilitate reconciliation. The Parties mutually agreed that the TRC would investigate the perpetrators of serious violations abuses in order to foster a climate of reparations in the communities and the country as a whole.

Revealing the facts surrounding these incidents is essential for most victims of human rights violations. Families of those who have disappeared are still unaware of the whereabouts of their loved ones. The truth is important for all parties involved, including their families and the wider community.

Truth seeking in the post-conflict context of Nepal has not yet been established. The state has financially accommodated the family members of the disappeared persons and those that are deceased in their records, but there is still lack of official acknowledgment as well as formal apology. In Nepal, where the traditional power structures of the Maoist regime and the State remain in place, the commissions may not be able to uncover the full extent of the truth, as the process is driven by powerful conflict actors. This is due to the power dynamics of the country, and the difficulty of constructing a unified narrative and understanding of past abuses.

The way the commissions will ascertain the truth and who will benefit from it will be determined by a variety of factors. These include the scope of the commissions' mandates, as well as the availability of time and personnel, political influence, and the manner in which evidence and analysis are collected. These elements may impede the completion of the final report, which could be very unsatisfactory. Clarification and guidance should be provided regarding the types of truth that should be examined, documented, and presented, for whom, and by which means. Currently, there is a lack of confidence that victims of the war will receive a satisfactory response, or that they will be able to obtain the full truth they are seeking.

Although some family activists welcomed the concept of reparations, it was an ideology that many families of the victims at the district level could not grasp fully. The government paid compensation to the family four times yet did not acknowledge it by

issuing a formal apology that could have made a significant positive impact to the family members. Victims demand recognition along with monetary reparation which addresses broader social, economic, cultural, and psychological violations.

In order to ensure that human rights violations do not recur and to reduce the likelihood of future acts of violence, the transitional justice process must attend to the issues of cold social relationships and trauma in addition to other socioeconomic issues. Reparations, such as financial compensation, rehabilitation services, emotional relief, and genuine apology to victims and their family can embark on their complex needs and give the impression of a real desire for creating an atmosphere to survive.

It is also necessary to provide details on how victims of conflict will be able to access the reparation programs. The TRC and the CIEDP are mandated to make recommendations on reparations. Therefore, there is a need for a well-defined set of actions for ensuring unbiased reparation for all victims regardless of whether or not they are associated with any commission. Reparation must be defined as a legal right that the victims and families can exercise but it must not be interpreted or used as an aid, welfare, or facility for them. These actions should be tailored to the priorities and needs of the victims. Additionally, it should be addressed comprehensively by including not only the individual reparations, but also focusing on both representative and social levels.

For effectively addressing the underlying roots of human rights violations of the past, a reparation strategy must attend to wider socio-economic and cultural infractions in connection with the structural violence that took place after the civil unrest, and thus classifying them by caste, ethnicity and economic status (International Center for Transitional Justice [ICTJ], 2012).

The establishment of the Interim Relief Program (IRP) has provided victims and families with a range of reliefs such as financial rewards, educational grants for the children of the suffered, medical compensations and care at government facilities, skill-based employment training, and compensation for property destroyed during the armed conflict. It should be noted that IRP has only been around for a short period of time and has not yet been able to address all victims' needs. The IRP's experiences have been reviewed as well as registered (ICTJ, 2012). For making sure that victims' socio-economic and cultural needs are met, it is important to not only have a reparation policy that is inclusive in nature but also to ensure that the development policies of the Government and donor agencies should align well with transitional justice (Robins, 2010).

Not only should the state make financial arrangements for the victims and their families but also establish an acceptable mechanism for recognizing and attending to the underlying consequences of past grievances.

The procedures of the commissions have failed to provide appropriate protection not only for the victims but also for the witnesses. The most significant factor is the level of trust. If there are no credible measures in place, victims of violence on both sides will not be able to speak freely and provide honest testaments. There should be safeguarding mechanisms in place that commissions must establish, including a guarantee of safety for victims and witnesses, evidence protection, and secure archiving.

The transitional justice process needs to put more emphasis on protecting victims and witnesses, and discrete established procedures must be put in place to guarantee this to occur.

Consultation plays an important role in shaping discussion and framing policy, yet it is lacking to happen victims' families and their associations. One of the key elements of a victim-centered approach to transitional justice involves consulting with victims at a broader level.

One of the major dissatisfactions of the victims' associations in Nepal is they were not consulted during the policy making phase of transitional justice. Their major complaint is policies are made by the state actors based in Kathmandu and victims from all around the country are not included in the process. It is essential to make sure that victims are included throughout the process from policy formulation to when it is actually put into practice. This will help enhance their representation and ensure that they can engage and assume responsibility in the transitional justice approach. A good starting point for making sure that victims engage and participate in the process for building a more peaceful future is to design and implement a more comprehensive policy which guarantees a bottom-up approach in the transitional justice process rooted at the family level for attending to complex daily need of the victims and their family.

5.5 Transitional Justice Process after Nepal's Civil War (1996-2006)

The then civil unrest of Nepal between 1996-2006 between the Maoist and State security forces resulted in deaths, disappearance, torture, and displacements. According to the record of the MoPR there were about 17,000 deaths and 1,300 missing and it does not consider the victims that were tortured and sexually abused. The CPA entailed taking the country towards post war peace building. Its major agendas included- disarmament, demobilization, and reintegration of Maoist combatants, drafting new constitution through constitution assembly, abolishment of monarchy, integration of Maoist army into Nepal army, and establishing transitional justice mechanism to look

after human rights abuse during the insurgency period.

The peacebuilding began in Nepal in 2006 with the completion of the CPA and in 2007 with the establishment of an Interim Constitution. With the peace agreement in place, there was a strong commitment to address the grievances of the country. To this end, the political leaders at the time proposed forming the TRC and CIEDP commissions.

The Act to form the commissions was passed earlier in 2013, which was dissolved for not meeting the international standards and violating the international laws on human rights as it had provisioned for amnesty and reconciliation without justice grounds. It was highly rejected by the conflict victims and the various human right agencies. Jointly the victims of conflict petitioned the Supreme Court (SC) to amend the flaws in the CPA and to draft a new one fixing the flaws.

Initially, the TRC and the CIEDP were formed for a maximum period of two years with a possibility of extension for one additional year to complete the assigned tasks. However, in three years both commissions failed to deliver satisfactory results. They continue to suffer because of their limited mandates and the fact that the government financially controlled them. The victims group accused the commissions as incompetent and passive and have failed to deliver a result in a timely manner.

Victims' groups and civil society demanded the CPA be improvised in accordance with the SC directives of 2 January 2014, and 20 February 2015, related to transitional justice and war era crimes. Nepal's SC has ordered a series of rulings to implement legislation and practices that promote a fair judicial system in Nepal.

5.5.1 Supreme Court's Verdict

Following the Supreme Court's landmark ruling of June 2007, which gave clear instructions to the government to investigate disappearances during the conflict, the

CIEDP was added in the transitional justice architecture of Nepal. However, before the commissions had the opportunity to begin their work, in 2015 the Supreme Court invalidated the provisions of the law that governed them, ruling that they could be used as a means of providing amnesties to those who had committed the most serious abuses.

5.6 2014 Truth and Reconciliation Act of Nepal

The primary objective of the CIEDP TRC Act 2014 is to establish the TRC and the CIEDP in order to investigate past violations and to ensure that there are systems in place to help vulnerable witnesses get involved in the truth-seeking process. However, it still fails to meet international legal standards in several areas, particularly regarding the possibility of granting amnesty for international criminal offences and serious human rights violations. In addition, it is unclear about the relationship between truth seeking, amnesty, and prosecution mechanisms, and on the safeguards for individual rights. This research looks at these recent developments and highlights the challenges that need to be addressed if transitional justice goals are to be met in Nepal.

5.7 Truth and Reconciliation Commissions in Nepal

An anonymous respondent in Bardiya stated to the researcher in 2018 during a field interview:

Only if we could know the truth why my husband was taken by the army at midnight from his bed and never returned? If the government could tell us whether he is still alive or dead? If he is dead, why doesn't the government give us his dead body? I would be in peace if we could do his death rites.

After TRC and CIEDP were initially formed in August 2015, their operational mandates were due to expire in February 2019, but the government of Nepal added an additional year so that the commissions could complete their work. Even though people and

organizations were cautiously optimistic about the extension, getting meaningful justice for conflict victims still remained as a challenge and a source of renewed uncertainty.

In the four years since TRC and CIEDP commissions were established, the commissions have yet to make significant development. TRC has examined only 10% cases so far, whereas CIEDP has completed 75% cases that it received out of a very large number of complaints received by both. The agencies also lack sufficient funds to carry out and finish looking at the cases, the commissions will not be able to conclude their work within the one-year period.

5.7.1 Role of TRC

As discussed above TRC commission was established in February 2015 and its primary objective include the following follow:

- a) To identify and make public the serious human rights violations that occurred during the civil war and unrest of Nepal between 1996 and 2006,
- b) To foster a long-lasting and agreement between the victims, the rebels, state forces as well as the state,
- c) To make sure that victims are compensated appropriately, and
- d) To ensure that perpetrators of the gross offence related with those incidents are brought to judicial trials and punished.

5.7.2 Role of CIEDP

Commission on the Investigation of Enforced Disappearance had been specially formed to investigate those that went missing during the civil war and unrest in Nepal. The government and human rights organizations record around 1300 people missing during the armed conflict of which majority is said to be done by the state personnels, particularly the Army. After the establishment of CIEDP, it has received 3000

complaints from 73 districts of the country. At the time of this writing, the commission's tenure had been extended from two to three years and it had done its preliminary investigation. It has published the data of the complaints received.

Table 5.1: Provincial data representing number of enforced disappeared.

S.N.	Development Region	Total Number
1	Province – 1	350
2	Province – 2	181
3	Province – 3	475
4	Province – 4	278
5	Province – 5	793
6	Province – 6	360
7	Province - 7	430
Total		2867

Note. Adopted from The Commission on the Inquiry of Enforced Disappeared Persons in Nepal

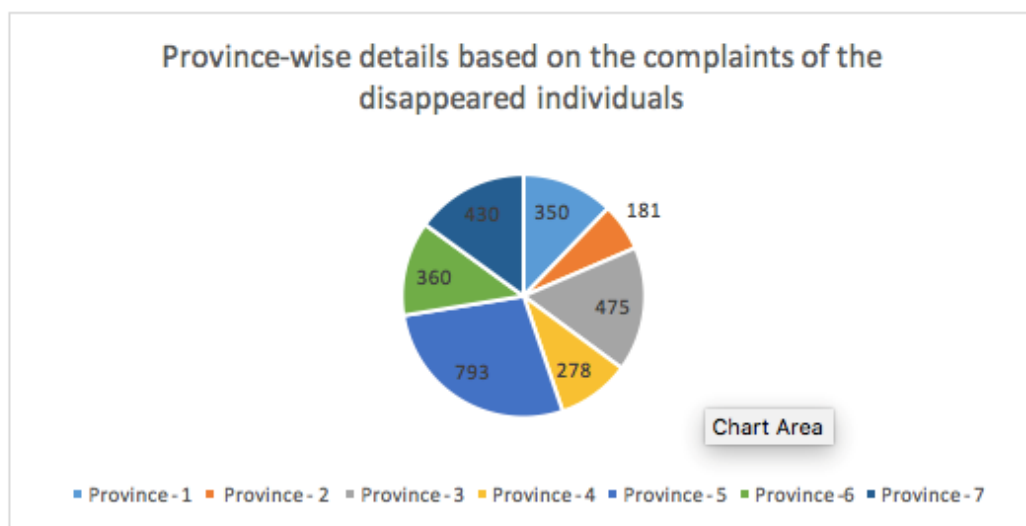


Figure 5.1: Provincial data representing number of enforced disappeared (Adopted from The Commission on the Inquiry of Enforced Disappeared Persons in Nepal).

Table 5.1 and Figure 5.1 represent the tabular and graphical views of the provincial data for the number for enforced disappeared. The data was taken from the reports section of the CIEDP website. This data is based on the number of complaints the commission received. This data is categorized according to the new political structure of the country. According to this data, the majority of enforced disappeared are from the province number 7 constituting Bardiya district with highest number of disappeared from the country to the other highest districts being Banke, Dang and Rolpa consecutively. Bardiya district alone has more than 200 disappeared 90 percent of belong to Tharu ethnic group. According to the reports of the UN and other international organizations Tharus were mostly targeted in the suspect of Maoist as the Maoist leaders the According to the recent data from CIEDP Nepal, obtained from their preliminary investigation 80% of the total number of disappeared were enforcedly disappeared by the state army and other 20% are from the then Maoist party of Nepal.

5.7.3 Complaint Registration Process

A little more than a year into its existence, both CIEDP as well as TRC started to receiving cases from conflict victims' families amid doubts regarding the legitimacy of the process and its ability to provide justice to the individuals and their families.

On the first day of the 60-day complaint registration period that was opened through the offices of the Local Peace Committees (LPCs) and the head office of the CIEDP in Pulchowk, complaints from Banke, Bardiya, Kailali and Kaski districts were submitted in only single digits. The total number of complaints registered was 15. This raised questions as to whether information on the complaint registration process was disseminated effectively.

On the other hand, 125 cases were registered through LPCs for the TRC on the first day

of the 60-day registration period. Mid-Western regions saw the highest registration number (36 cases), which was the epicenter of the decade-long Maoist conflict, followed by the central TRC office in Kathmandu (26 cases) and its central regional office (24 cases).

TRC started receiving complaints only after 14 months of its establishment in February 2015. The commission invited victims and their relatives to submit allegations of abuses and violations of human right perpetrated by both the government and the revolutionary the then rebellion Maoist party. These allegations could include rape and sexual abuse, extra-judicial killings, torture, and kidnapping.

From April 17 to June 16, the victims or their relatives could submit complaints to the central and district committees of the commission through various means, including visits, post, e-mails, and telephone calls, according to a member of the TRC, Manchala Jha. The person registering the complaints at the commissions had to complete the forms provided by the commissions and submit supporting evidence (if available) of the case.

5.7.4 Participant Observation during the Complaint Registration Process

The Researcher visited CIEDP's head office in Kathmandu and local peace committees in Kailali, Chitwan and Bardiya during the complaint registration process to observe the process. She especially observed the registration process in CIEDP with the permission of one of the commissioners. There were two rooms allocated for the complaint registration process, in one room there were three tables and three men on each table to register the cases. The room was open to access for everyone, the person speaking at one table could be easily heard on the other table. Researcher did not see any women on those tables and when asked the commission officials informed that if

any person requests to talk separately, they did have such provision and another room for it and especially for women.

5.7.5 Flow of Information

The spokesperson of the commission shared that the information about the complaint registration process was published on national newspaper 'Gorakha Patra' but still it had not reached to the victims in the rural settings, which only reached to the victims in the urban centers. The main way the victims got the information was through the victim's associations through word of mouth. They played an active role in informing the victims from all around the country and getting their case registered at the local peace committees. They also requested the local radio stations to flow the information. The government seemed to lack a proper information dissemination strategy in this regard.

5.7.6 Confidentiality

Both the commissions ensured victims and their families that the proper confidentiality will be maintained during the process if they request it. At the end of the complaint registration, it is mentioned about the option to not share the personal details of the person registering the complaint. From the interview with the commissioners from both the commission it was shared that confidentiality has been maintained to ensure security of the person registering the complaint and not to create any harm to them. Though the commissions ensured confidentiality, people still feared about it and especially about their security.

5.7.7 Gender and Complaint Registration Process

Unfortunately, the complaint registration process was not very gender friendly. Especially for women who experienced sexual abuse and torture during the civil unrest

did not find themselves very secured to share and register complaint. Although cases of sexual violence and torture have been registered, in those cases as well the country lacks legal mechanism to acknowledge and consider the human rights abuses and violations during the civil war.

One of the most worrying aspects of the conflict is its effect on women and children who have suffered sexual abuse, rape, and torture. The TRC received 63,000 complaints and CIEDP received 3,000 since their establishment in 2015. Approximately 300 of these complaints are related to conflict-based sexual violence. This suggests that a large number of those who have suffered are unable to share their grievances as they are reluctant to register their cases as they fear the negative consequences.

5.7.8 Flowchart of Transitional Justice Process in Nepal

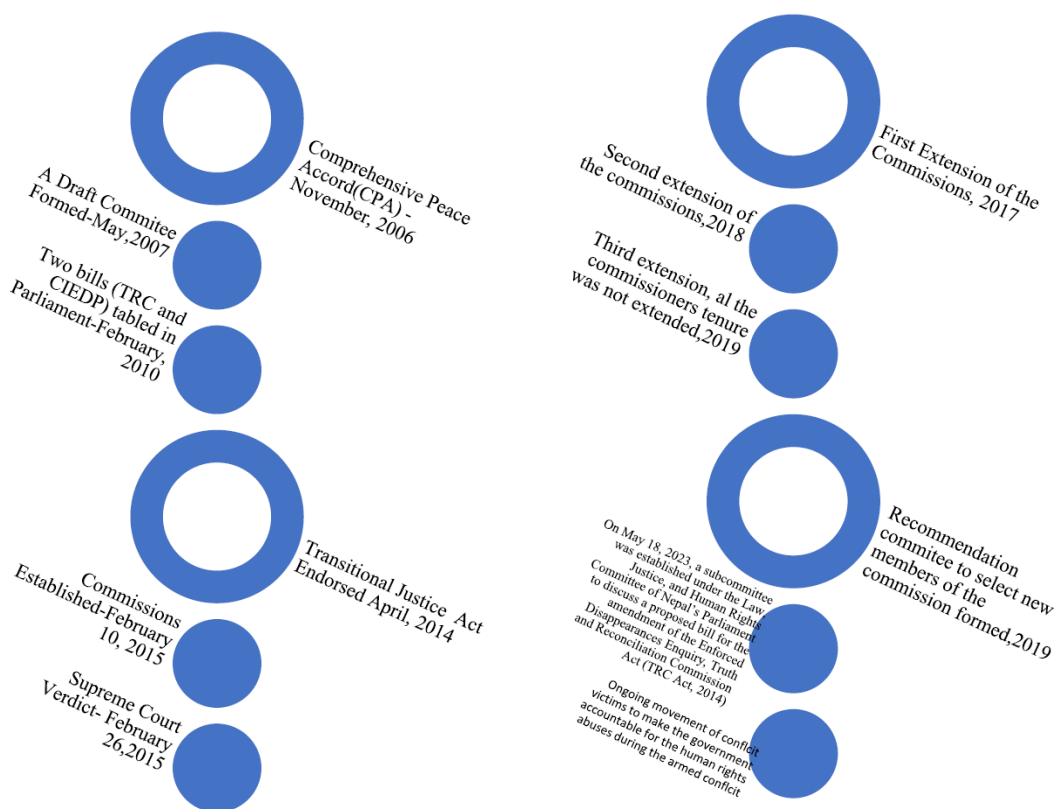


Figure 5.2: Timeline of Nepal’s transitional justice process from 2006 to 2023.

Figure 5.2 shows the flowchart shows the timeline of Nepal's transitional justice process from 2006 to 2023. It shows the different agreements, policies, amendments and ongoing struggle and movement of the conflict victim in the last 17 years after the CPA was put into effect. Transitional Justice is delayed in Nepal and has not gained momentum even after nearly two decades of signing of the peace accord. Two commissions are formed with multiple extensions, but it still has not been effectively functioning to start its mandated work. Transitional Justice process has faced critics from the victims, victims' associations, peace building and human rights organizations for taking a slow path and not putting victims' rights at the priority and having the political appointments of the commissioners and being on the side of amnesty.

CHAPTER 6: ENFORCED DISAPPEARANCE AND THE NARRATIVES OF THE VICTIMS

In this chapter, the researcher has analyzed the narratives of those that have suffered due to enforced disappearances and forms the conceptual framework of the research which includes the 'Dealing with the Past' concept that encompasses four major elements: Rights to Truth, Justice, Reparation and the Guarantee of Non-Recurrence. The chapter begins with the definition and understanding of enforced disappearance during the insurgency in Nepal and narrows down to the lived narratives of the victims.

6.1 Missing, Disappeared or Enforced Disappeared during the Armed Conflict

60-year-old Padam Tharu has not heard anything from his son after he was taken by army on 2058/12/29 B.S (11 April 2002) from his home in Nauranga 6, Bardiya as he states:

Armies came at midnight and grabbed me first, they told me 'We came from so far and you are sleeping', and I told them I am an active member of UML party and not involved in Maoist activities. They left me, but they went into my son's room where my son and his wife were sleeping. They said they would take him for investigation and leave him after 2-3 days. My wife held my son and requested the army not to take my son. We were terrified as the army faced guns towards us. My wife kept on requesting but the armies hit her on her back, and she fell on the floor. We both cried for hours after they took our son. From the next day we went on searching for our son, inquired in different barracks. Through some sources we got the information that our son was kept in Tikapur when we went there, they told us that we should first register the case in Gualriya and we registered and came back to Tikapur, they said our son was not

kept there; we never got the full information or any proper information about our son. After some years, we heard that our son's name was in the list of dead during crossfire between Nepal army and Maoist Insurgents; I went to our village development committee and didn't accept that as there was no crossfire that night, my son was taken by the armies in front of our eyes. Meanwhile the organization called 'Advocacy Forum' knew about the case and offered to help us and informed us that we can fight the case in the international level. There hasn't been much progress in the case.

My son used to work in furniture and used to earn around 8000 rupees a month, he was telling him that soon his salary would be raised to 12000 rupees. He had recently been married. Our daughter in law stayed with us for 12 months after our son was disappeared and married another man. Still now I cry, as I feel how happy I would have been if my son was with me, I do not even need government's 10 lakh relief money, me and my son could work and earn for our family.

We got the relief money in five installments. We have registered in the CIEDP commission, but we do not trust the government. If they wanted to do something they could have done long ago. They know everything but still do not want to do anything for the victims. There is no rule of law in this country. We face challenges in multiple ways, economic, health, social, psychological and legal.

Nepal has a long-standing history of state-led disappearances, starting as early as 1951. Ram Prasad Rai's status, who was a prominent figure in the protest movement of the 1951 Delhi Agreement, is yet to be ascertained. Similarly, the whereabouts of Sukdev Singh, a resident of Hanumannagar in Saptari who was arrested in 1956 from Inaruwa of Saptari, are also presently unknown. This pattern of arbitrary detentions and

disappearances became more prevalent during the authoritarian Panchayat era between 1961 to 1989. These practices persisted even after the return to democracy in 1990. The number of cases registered for the enforced disappearance by the state rose significantly following the commencement of the civil war in 1996. The number of enforced disappearances increased further after the emergency state was announced in November of 2001, as well as the subsequent issuance of the TADO. On the other hand, CPN-M was complicit in the violent kidnapping and disappearances of individuals when they adopted kidnapping as a part of their war tactics. Forced disappearances are one of the main sources of distress for Nepalese due to the prevailing state of impunity and the unanswered questions of the victim's families regarding the act. During the armed conflict, enforced disappearances were widespread and systematic, and while current law does not criminalize enforced disappearances, international law does provide protection against them.

A report published by the ICRC defines the concept of 'disappeared person' as any individual whose current status is not known to the family members, or who have been reported missing due to armed conflict, *internal violence or internal disturbances* (Bernard, 2017). The principal categories of missing person are those that are dead, state personnels or rebellion groups, displaced persons, refugees, isolated populations, children separated from their families during fight or because they were forced to join the forces or rebellion group, people captured, arrested, or abducted, mentally ill persons whose families are unaware of their fate and whereabouts (UN. Secretary-General [UNSG], 2010).

6.2 International Instruments

The United Nations Convention's adoption has been widely acclaimed as a milestone in the fight against enforced disappearance, which has become a widespread and

particularly serious issue. The Convention seeks to broaden the scope of international criminal jurisdiction for enforced disappearances by making it possible for individuals to be held accountable for their actions. An amnesty prevents future prosecution for certain crimes committed prior to the implementation of the amnesty. In general, amnesty applies to crimes committed during a certain period or in connection with a specific event, such as armed conflict (OHCHR, 2006). Amnesties also often relates to specific individuals or groups, such rebels from the armed opposition or state armies and officials. Three distinct categories of amnesties exist which include self-amnesty, blanket amnesty, and conditional amnesty. Self-amnesty refers to an amnesty act in which the alleged perpetrators adopt in order to immunize themselves from criminal prosecution. A blanket amnesty is generally understood to be applicable to all individuals belonging to certain categories (e.g., rebel groups and state armies), does not usually provide a method to figure out the eligibility, and does not impose any conditions on the recipients. In the case of conditional amnesties, the offender is required to comply with the conditions specified in the amnesty law prior to being eligible for an amnesty.

6.3 International Human Rights Law

In accordance with international law, an amnesty cannot be granted in the event of a crime committed during a war, a crime against humanity, a genocidal act, or torture. In addition, the obligation to provide remedial measures under international law renders an amnesty unlawful if other serious violations of human rights have occurred.

The first stage of transitional justice focused predominantly on the establishment of International War Crimes Tribunals, specifically the Nuremberg trials and included ‘back-of-the-envelope’ approach of applying human rights laws and standards to past behavior (Sharp, 2013, p. 154). Stage two, however, was marked by prosecution at the

national level in countries that had emerged from oppressive regimes and were on the path to democratic political transformation. The most significant part in this phase was the discussions on ‘peace vs. justice’ and ‘truth vs. justice’, which dealt with the conflict between moral, political, and legal issues in transitioning societies (Bell, 2009, p. 321; Leebaw, 2008, p. 91; Paige, 2009, p. 85).

Tensions between international and local transitioning approaches have been around for both practitioners and researchers. The tensions have been reflected in a range of discussions, such as how much impunity can be tolerated to bring conflict parties to a bargaining middle point, how much “universalist” principles (i.e., human rights) are capable of responding to specific requirements and nuances of diverse post-conflict regions, and how retributive and restorative justice can appropriately be culturally reconciled.

6.5 International Criminal Law

The Secretary-General’s Guidance Note of March 2010 sets out the fundamental principles and guidelines for UN’s work is based on its approach to Rule of Law Assistance (UN. Secretary-General, 2010). This definition refers to the entire procedures and systems that are involved in a community’s efforts to recover from past abuses, hold perpetrators accountable, provide justice, and foster reconciliation.

The above definition is also the one currently the most widely used by the European Union (EU) and includes the four essential components of transitional justice (European Union, n.d.) which include justice, truth, reparations, and guarantee of non-occurrence.

The four components are included in the current global understanding of the transitional justice approach. These guidelines provide direction for the EU's transitional justice strategy, with the aim of achieving the following objectives: making sure the unrest

does not occur again, dealing with extremely grave crimes of international concern, and preventing any such crimes to occur thereafter.

6.6 National Instruments and Obligations

Nepal's Comprehensive Peace Agreement and Interim Constitution of 2007 provide for different transitional justice procedures and practices in order to make sure that justice for human rights victims of decade of armed civil unrest in Nepal is achieved. As many as thousands of people were killed, hundreds went missing, and tens of thousands were rendered disabled, injured, tortured, or displaced during the conflict. The Government of Nepal (GoN) launched the Interim Relief & Rehabilitation Program (IRRP) in 2008 as a priority program with the objective of providing monetary assistance and other relief support to the conflict victims. The GoN has implemented a number of peacebuilding initiatives, including the establishment various committees and organizations such as the Ministry of Peace and Reconstruction (MoPR) which have been instrumental in the implementation of the IRRP. It is also noteworthy MoPR was reliant on state agencies in the district and other local offices for implementation because they lacked their own offices and working spaces in those areas. Even though it is referred to as the IRRP, this initiative incorporates some elements of the reparation program that cannot be treated in isolation. This program provides assistance, relief, and benefits to a wide range of conflict victims, including families, widows, and children of those that were killed or disappeared during the civil unrest and for those that were disabled including those who lost their homes during the war (OHCHR, 2005; 2008). However, there are considerable gaps within the existing victim categories and benefits that exclude essential victim groups including those affected by gross abuses. Moreover, there is limited evidence of explicit gender sensitivity considerations at either the policy or implementation levels. Furthermore, evidence indicates that

victims, women, and other vulnerable groups were not consulted extensively when designing and implementing the program.

The MoPR's IRRP did not represent or substitute the full-scale redressing a requirement that do more the compensating the victims including additional essential reparation components such as justice, truth, self-satisfaction, and guarantee of non-occurrence. While the IRRP focused more on the compensation, it does give victims some recognition for their loss and suffering.

Nepal's 2009 Ordinance on the Disappearance of Persons issued by the president while the parliament was in recess pursuant to Article 88 of Nepal's 2007 Interim Constitution was not ratified by Parliament and is consequently no longer in effect. On 26 April 2014, the bill on CIEDP TRC was passed by the constitutional assembly and by the President of Nepal. According to the bill, commissions were formed with the five-member committee including at least one woman. Former judge of the Supreme Court remained as the chief of the commission. Now, both the commissions are going through renewals as they could not produce many results even with two extensions and they aren't trusted the human rights, peace building organizations and victims. As they are not trusted as an independent and impartial body.

6.7 Narratives of the Victims of Enforced Disappearance

Although there are varied definitions of victimhood in different contexts, this study has attempted to define it through victims' own lenses by allowing them to appropriately recognize their personal identity based on their interactions and relationships with others. Even though the understanding and definitions of victimhood have evolved over time, the dreadful impacts of war in their lives continue to exist in the form of distress and suffering.

During this study, the victims revealed that they were constantly traumatized about their past grievances by those in their own family and society which suggests that victimhood is not always caused by external factors outside of their personal and safe spaces but surprisingly from within those spaces as well.

The other important thing to consider when interpreting victimhood is the impact of historical socio-economic exclusion and marginalization of victims including those related to gender, caste, and religion among several others. Unfortunately, the transitional justice discourse tends to disregard some of these factors, for example, the gender issue. The other overarching issue is how the state prioritizes their closer connections neglecting those that are in actual and immediate needs. This has led to evolving understanding and redefinition of victimhood.

On the one hand, it is important for the victims to establish their identity as an agent so that they can properly negotiate with the state. On the other hand, it is important to understand that the mainstream transitional justice discourse views victimhood and agency as opposites.

Sunmaya Tamang is in her sixties and her son had been enforced disappeared since 2001 (9th Bhadra, 2059 B.S). She remembers it was 2 am and armies had come into her house. They took her youngest son, who was 23 years old. She recalls that armies told her that they are just taking him for a day and will return the other day. But to her surprise her son came neither back nor did she receive any information about him. She received 3 lakhs as relief money and has not received anything after that. She says justice for her would be to get the remaining relief money from the government. Her elder son lives and works in Bara district, and she lives with her husband in Chitwan. They have two goats given by the Red Cross through their Hatemalo program. She goes

on to mention:

I went in search of my son to all the government offices, Army Barracks and to different organizations but I didn't get answers from anywhere. Government officials and people in my society tell me that my son was a Maoist, that is why the army took him. It was not in my knowledge that he was ever involved in Maoist.

Surjal Chaudhary's 20 years old elder son was taken from his home on 2 August 2002 (1st Bhadra 2059 B.S). He remembers the incident in this way:

My Son hadn't even worn clothes; I ran after them and requested them not to take my son but all in vain. They took my son, and they didn't even allow us to hand his clothes to him. I have heard that the army had come up with a list of people to take on that day. We never got any information about our son. We are always tense after that day; the environment at our home became worse. My son had two wives, his first wife committed suicide after my son disappeared and his second wife got remarried. His four children live with us. It is very difficult for us to raise four kids plus the trauma of our son's disappearance.

Gaida Case (Rhino Case)

34 years old Lila Devi Bhandari from Chitwan states:

I know and I have seen armies taking my husband who was sleeping with me at night, but we came to know only few years ago that my husband's case has been registered at the district administration office as 'Gaida Case' which means it has been registered as he was killed by Rhino while hunting in the jungle. This is false. I received 3.5 lakhs as compensation from the government, but I didn't know they gave that money for the 'Gaida Case' and haven't registered my

husband's disappearance. Justice for me would be to prosecute the ones who disappeared my husband. Only two children get the scholarship until they are 18 years old, I find it unfair as we need more support for their higher studies. Until 18 they are in government schools, and we don't need much but after that it is very difficult for us to afford. My husband was the breadwinner of the family, now all our dreams and my children's dreams are shattered. My husband's disappearance has affected three generations of our family, his parents are old and sick and always in trauma about their son. It has left a scar in our hearts, neither can we find him, nor can we do his death rites. It further increases the hatred and mistrust towards the government and its institutions. I do not trust that these political leaders, commission, and government will ever be able to give us justice.

Lila's husband was arrested from Padampur Chitwan by the state armies in 2001 (2059 B.S.) there was state of emergency on that year. She claims that they took her husband to 'Devi Dutta Gan', and she takes names of the two army heads that were the heads of that Gan during that time. She recalls the night her husband was arrested. It was 12:30 at night and they took him from his bed, he was 38 years old when they took him, and she was just 24. They already had 4 children at that time and the youngest was four years old when the incident happened. Her husband was suspected of being a Maoist and the armies told her that they were taking him for some information.

Krishni's husband was a teacher in a small village of Dhangadi. He is the victim of enforced disappearance by the army. Initially he was arrested by the army as a suspect of Maoist in the year 1998 (2055 B.S.) and put in prison for 3 years. He was put in Kailali jail in Mahendranagar. Krishni explains the situation as:

When we went to meet him, we could see him in very bad condition, his clothes had blood stains, and they had put nails in his feet. He was tortured continuously for 3 years. He was not involved in Maoist, and he could not provide any information to Army. Later, when he was released, he was so frustrated that he decided to join Maoist. He used to say anyway now army tagged him and tortured him as Maoist, so he changed his mind and wanted to fight against the injustice by the state. Jana Sarkar was declared on 7thMangsir 2058 B.S and state of emergency was declared on 2058 Mangsir 8th. They again arrested my husband on 27thFalgun 2058 from RamskhikharJhala VDC by the then Royal Nepal Army. They kept him in Tagari Barrack in Kailali and they never allowed us to meet him; they used to say that my husband was inside but never gave us a chance to see him. Later, informed us that they transferred him to Kathmandu on 16thJestha 2060 B.S. I went to all the jails in Kathmandu in search of him but could not find him. During the state of emergency, it was very difficult for the people of Chaudhary community, if the armies saw 4 Chaudhary's together, they used to suspect them as Maoist and arrest them. Many Chaudhary sons have joined Maoist because of the torture from the Army and many innocent Chaudhary's have been killed. They must give my husband back alive or give the dead body to me. If he had died in the war, I would not have asked for anything, but he was arrested and tortured, and we never heard from him ever since. His friends who were arrested at the same time survived and are out, but he never came back. I do not trust the government and I have lost all hope that they will ever tell us the truth. I wish they were accountable and serious towards the suffering of the victims. My husband's disappearance has affected us in multiple ways. Me, me in laws and my son are always in trauma because of it.

My son was just 3 years old when they took his father, and it is so heartbreaking when he asks about his father. For almost 2 years I didn't meet anyone and didn't feel like going out of home and talking to anyone. I was in shock. I had to seek treatment for psychological counseling, with the help of ICRC's Hatemalo program I got the treatment and I feel better. My son had psychological problems too. He still gets the treatment. He became mentally challenged while he was studying in 6th grade, he could not even read the alphabet. The organization named 'BASE' helped for his treatment at Jana Maitri hospital for a year. He had to go for counseling sessions for an hour every morning and evening.

If not for me I had to live for my son, so I passed I.Ed. exam and started working on my husband's position at the same school he taught. I feel that we have been injustice due to our government. We were told that the government would give us 10 lakhs but until now we have only got 5 lakhs, that too in 3 installments. Justice for me would be to hear the truth of the status of my husband and be able to live in dignity in society without discrimination and be able to utilize the property on my husband's name.

Krishni has registered the complaint at the CIEDP, National Human Rights Commission, INSEC, and ICRC.

Bajari Chaudhary from Dhangadi has been waiting for the whereabouts of her son for 15 years. Her 14-year-old eldest son disappeared from Mangsir 12th, 2061 B.S from his school. He was studying in the 8th Grade. She and her family members had no idea which side of the conflict would disappear him as she states:

We searched for him everywhere and distributed his photos and with the help

of ICRC we registered the case at the district police office, district administration. Later in the national newspaper (Gorakhapatra) and on the data of INSEC and through the local news on the radio we found out that –my son’s name was listed as dead in one of the army’s attacks in the district. But we have not got the information directly from anywhere until now.” Now, they have registered the case at the CIEDP through the local peace committee. They made the death certificate of the disappeared son with the evidence of the Gorakhapatra and INSEC’s data and received 5 lakhs as relief money. I wish to get justice and I wish the commission investigates and punishes the one who disappeared and killed my son.

She explains to the researcher how difficult it is for her and her family to live in a limbo and trauma it brought in their lives. How they remembered and missed him on every occasion and festival as she adds:

I could not see any of his friends walking by my house, I just could not control my tears. We went to search for him in each of his friends’ houses and asked his teachers and principal how my son disappeared from the school and if they had seen anyone chasing him. Nobody answered our questions.

To slowly gain strength and come out of the tragedy which is engraved in her heart for the rest of her life, she has started to take part in the community initiatives and joined committee of community volunteers and women’s group. Searching for her son at all levels of the government and encountering the organizations working for victims’ rights, she also participates in different programs locally and nationally. She was elected as a treasurer of the ‘Mukta Kamaiya Bikas Manch’.

Families of victims in Kathmandu expressed their dissatisfaction with the government

for their lack of action to provide justice for them. At the opening International Day for the disappeared victims held at the Mandala Theater in the capital, the families expressed their anger at the government and the parties for delaying the transitional justice process.

41 years old wife of a victim of the enforced “disappeared” shares her story as follows:

He was 31 years old; we had a small grocery store. Maoist took him from our home and never returned him, it was 8 am, Ashwin, 2058 B.S. Ever since I had no information and contact with him. I went everywhere in search of him. I went to the Human Rights Commission, ICRC, and Police Administrative office. The pain of husband disappearance and living with little children is traumatic, it has affected me in all sectors, psychological, economic, social. I have a son and a daughter; they were 3 and 4 years old. My daughter is married now, my children are still searching for an answer from the government, and they feel it’s their right to know about their father. I wish there was a law to punish enforced disappearance and there would not be any incidences as such. I got 10 lakhs in three installments from the government and the government wants us not to speak on this matter. But can you buy a person’s life in 10 lakhs. Commissions never consulted us, and we were never consulted in any of its procedures by the government. I am associated with NEFAD, and convict victims’ common platform, I have also supported ICRC in its work. Through these organizations we all victims from both sides have come together to fight against the injustice we are facing and pressurizing the government to provide us the justice and truth. I do not find the transitional justice process of Nepal victim friendly as we are not consulted and involved in its process. Justice delayed is justice

denied, until when we should wait for justice. Is it the strategy of the government to shut our mouths with the relief money or is the government going to provide us justice?

Sarita Chaudhary shares her story as:

We have given 23 points appeal to the government through national meeting of CVCP. We told the government to make the transitional justice process a victim centric. We ourselves had requested the commissions. We hope we do not have to establish alternative mechanisms like in the international arena or must go to the international criminal court. As the popular saying – “Justice delayed is Justice Denied.” We do not want this process to be further delayed and ignored by the government. Complaints were not many complaints registered in the 1st phase but in the 2nd phase we helped to flow the information among the victims to register the complaints. We convinced the victims that these are the government’s steps, and we must support it. We have gone to the commissions to hear us rather than them coming to us for consultations. We have given all the evidence in detail to the commission for the investigation, as we thought if we are late the evidence might be lost. I feel that politicians and government are not for providing justice and addressing the victims, I find that they want to create obstacle in every phase of transitional justice, from forming the commission to recommending the names of the commission. There is no political will to advance in this front. They have not cared about any aspects of transitional justice and the whole process is not victim centric, the way they deal with us, they are not sensitive, maintaining confidentiality of the victims is a challenge, victims are not respected. I feel that politicians are afraid that they might be punished if they support in the process. Sher Bahadur Deuba, Pushpa

Kamal Dahal and UML leaders were all involved in the past and they fear they might be taken to Hague.

Binaya Kattel, Lamjung teaching at college and works at a hospital and also a researcher in the field of transitional justice, states:

The ten years armed conflict affected me in my life in multiple ways, economic, social and career. My dad was enforced disappeared. When he was taken, he was around 40 years old, He was not politically involved in any political party. He was a teacher and working in a non-profit. He was taken while traveling from Lamjung to Kathmandu, my brother was with him. During the insurgency, the army used to check all the vehicles and they used to make all the passengers come out of the vehicle for checking. My dad had carried money with him, and the Army saw money on my father's bag, and they took him, I don't know on what suspect they took him-While traveling from Lamjung to Kathmandu through Tanahu. They took him from Tahanu's Baissagar Army Barrack on 2058/12/19. Then after we went to that barrack multiple times in search of him, we were not given proper answers and they were not helpful. They were very rude and disrespectful towards us. They told us they had not taken our dad, and they told us not to visit there. We went to different organizations like the District Administration Office, Office of the Attorney, National Human Rights Commission. They said they would help us but even during that time they could not do anything. I was just 12 years old when my dad was taken. They left my brother; maybe they left him because he was a young 13-year-old boy. This incident has affected us in multiple ways, psychological, social, economic, and cultural.

Government should be accountable to give us an answer why he was taken and why we don't hear anything afterwards. He was forcibly disappeared, a normal citizen who wasn't inclined to any political party, it is the duty of the government to provide relief and rights to the victims. We have registered the complaint at the district, national human rights commission and at ICRC. I am involved in NEFAD, and I have also worked as a secretary of the association and am still involved in it. We are involved in updating the families of the disappeared and we must fight for our issue and aware them about our critical engagement in the transitional justice process. During consultation of the commission with us, they assured that they would work on creating victim centric approach, but it's not seen on the ground. I feel that there is no political will to take it further, Government is not listening to victims rather it is listening to the political parties. I am a conflict victim and I want justice. We have not got justice in 16 years; we are fighting for it continuously, still we are not hopeful if we will ever get Justice. I feel that victims must come together to fight so that similar incidents do not happen in the future and the future generation does not have to live with the pain we have felt and lived with. We have waited for a long time, but we want justice, and we want a closure on this issue. We have not been able to do our cultural rites and are still waiting to hear the truth from the government. Society disempowers the ones who are weak, society further adds social discrimination, and we lack social justice which adds up to the pain we are going through.

Nagma Mali, 22 years old, just completed master's in journalism. She is working at Voice of women media as a communication assistant and explains:

We are just two in our family, me and my sister, the only income source we

have is my salary. My sister is 18 years old now. During the armed conflict my father disappeared, but I didn't know at that time, I was just 6 years old. My dad was 29 years old then, he used to work at Pharmacy shop and was working to make sculptures. My dad did not have any political affiliation; he used to teach adults in the community. He was taken by the army. My grandmother went in search of him, the army at Chauni Barrack told her that he had seen my father for six months in that Barrack but later he refused to give any information at all.

What I recall is, I was taken out from the school that went to earlier, Later I came to know that my grandparents applied scholarship as conflict victim at another school and we moved to another. My mother had died while she is giving birth to my sister, we were raised by our grandparents, my sister is in her teen age now and I can see how it has affected her. I was not like the other children in society, I wasn't very outgoing, I used to stay inside the house and was stigmatized by society.

I am involved in CVCP and the organization I am working on also works on Transitional Justice. Commissions could not work on the side of victims and they themselves did not have many authorities to work. My grandmother received 9 lakh as interim relief money. We were not consulted by any of the government institutions working on transitional justice. My grandmother registered the case at the Supreme Court. I got scholarship money of 12000 rupees annually until high school. Victims' associations I am involved in pressurize the government to listen to our issue and our voices; we give appeal to NHRC and CIEDP.

70-year-old Mahangu Tahru from Bardiya district hasn't heard about his son who was

16 years old when he was taken by the Army in 2001 (2058 B.S) and states:

Armies came at midnight and took 8 men from our village. My son was sleeping but they woke him up and took him, they said to me not to worry and said they would send my son after two days of investigation. Since then, we have had no information about our son. My grandson was just 9 days old then and my daughter in law stayed with us for around four years until my son disappeared. After that she remarried. We spent a lot of money in search of our son, and we went to many places. We spent around 1.5 lakh to search for him, which was very difficult with our economic condition. We also went to Dhangadi, and I can't remember how many times we went to Gulariya and Nepalgunj. We are tired now and feel helpless. We wish the government had been little accountable in this matter.

Being a family member of a missing person is like no other life experience. Relatives of missing persons are left in a state of uncertainty: essential questions regarding the whereabouts of their relatives, as well as their own social standing, will remain unresolved for an extended period if proper action is not taken. Family members of the disappeared must wage a constant struggle not just to find them but also to check that they do not disappear altogether. The majority of missing persons' families have had to bear a significant financial, emotional, physical, and social burden, with no assurance of when or if their efforts will be successful.

As their incomes are insufficient to cover their essential necessities, many families are forced to economize on clothing, medical expenses, food, and the provision of education for their children. Their financial difficulties can be attributed to a variety of factors, including a decreased or non-existent income due to the loss of the primary breadwinner, the lack of legal status of the missing person, difficulties in obtaining

assistance from the authorities or humanitarian agencies, a lack of assistance, in general, and the financial burden of the search.

As a result, the spouse and family members of the missing person are not only experiencing physical distress and insecurity, but they are also becoming financially vulnerable and suffering from psychological distress, which ultimately results in the internal displacement of the missing family members.

Narratives of the wives of Enforced Disappeared

Buddhimaya Tamang from Jutpani Chitwan is waiting for the answers from the government for the whereabouts of her husband. She is 45 years old now and her husband was 34 when he was taken by the army from his home during midnight in 2002 (2059 B.S). Mother of three sons-who were just 10, 9 and 8 years old when her husband was taken. Her family depends mostly on agriculture and on income of her second eldest son, who works in Malaysia. As a relief money she got 3 lakh and 25 thousand from the government. She didn't get the information about the education support programs for the children and never received those for her children. She says justice for her would be to get an answer from the government –why her husband was taken and never returned, why didn't she get any information about him ever since?

According to the data of missing persons in Nepal published by ICRC - during (1996-2006), the families of the disappeared have greater levels of suffering and struggle towards life afterwards, which is why they became more vulnerable in society until and unless they are protected by state mechanism (ICRC, 2009).

According to the data collected from the wives of disappeared persons, they are in dilemma whether to declare themselves a widow or what. By now they do not have hopes that their husbands will come back but they haven't been able to do the rituals in

the absence of proper information and at least without any remains of their husband. In the absence of their husband and the proper state mechanism their psychological, social, economic, and legal needs are undermined and difficult to meet.

Right to Truth and Justice

The families of the disappeared persons have been facing the dilemma for almost nine years now and they are still unaware about the whereabouts of their family member. According to the preliminary investigation of the commission in 80% cases of enforced disappearance state security force is seen responsible and 20% is by the then Maoist party of Nepal. In the similar way most of the families of the disappeared shared during the interviews that their family members were taken during midnight by the state army in the suspect of being involved in the Maoist party and after that they were never provided with the information. Families want the government to be accountable regarding this issue and recommend the government to focus on Transitional Justice from the victim's perspective. Families' demand to know the truth why their family members were taken and what is their status now- If they are dead, they demand for the dead body or the remains and if they are alive, they want them back. They want the government to be accountable and provide them with the truth and justice.

Victims shared that in the absence of truth and justice there remains more space for the generations opting for violence. Past abuses must be dealt with properly to maintain peace and harmony and to keep the trust towards the nation intact. Its absence challenges the international human rights and humanitarian law and the rule of law.

Bhagiram Chaudhary is from Bardiya District of mid-west Nepal. He was directly victimized by enforced disappearances; Bhagiram's elder brother and wife were disappeared by state security forces in 2003 during Nepal's armed conflict. He has over

a decade of experience in grassroots mobilization, especially with the marginalized indigenous Tharu community who were targeted by state forces. One third of Nepal's conflict-related disappearances occurred from his community. He founded the Conflict Victims Committee (CVC) in his hometown and became a voice for those families of the disappeared. Bhagiram is now the general secretary of the NEFAD.

He has been the voice of his community, we can see him as a victim, activist and a leader representing programs and assisting various researchers coming to his village to get information about the families of disappeared persons in Bardiya district. His and his community's struggle is ongoing. They are quite skeptical about the commissions and doubt if the government will ever provide them with social justice let alone legal justice. For him, Transitional justice is not just about legal justice; it is more about social justice and catering for the needs of families of those hundreds of people taken either by the army or Maoist party during the armed conflict. Until now they have not had any information about their status and on why they were taken from their homes.

In an interview with him in his village, he shared that Bardiya is the district to have the highest number of disappearances as it is the district with the majority of Tharu population. Around 52% of the total population of the district are Tharus. Maoist raised the issue of class and tried to get the support of local Tharus, as Tharus had been the victims of Kamaiya system, discriminated by the feudal lords and had very poor economic condition. Most of them lacked access to education as well. So, during the insurgency Maoist would come to their households and they had to provide food for them. Maoist mostly targeted the feudal lords. State armies suspected Tharus as Maoist and they took them from homes as suspects and never gave the families the information of their whereabouts. He shared that they have formed a workforce on enforced disappearance and filed a case in Geneva against 198 people in 2009.

6.8 Legal Challenges

a) Property Rights:

40 years old Sangita Tharu shares her story- her husband who was 25 years old then, was taken by army at 3 a.m. from their home. They have three daughters; her youngest daughter was just 6 months old when this happened. The army didn't come with any notice, and they never told the reason behind taking him and about his whereabouts. Her husband was a teacher teaching at the local school there and he mentions:

It was very difficult to raise my children; we had little land on my husband's name but that too we could not sale as we were told by the local authorities that until twelve years of disappearance, we cannot sale the property on his name.

Muluki Ain to the recent interim constitution of Nepal, regarding the missing persons- the property under the missing person cannot be transferred to another person until 12 years. After twelve years the missing persons will be considered dead, and the property can be transferred to the family members. In case the enforced disappeared truth about their status if they are alive or dead are to be announced by the TRC and CIEDP, then only other legal rights can be exercised. In this legal obstruction the families of the disappeared persons are not allowed to transfer or sell the property and use it. In case of Kailali district coordinator of the Local Peace Committee shared with the researcher that one of the major challenges they have faced is, some of the victims made the death certificates to get the relief money form the government and to transfer the property. Later in 2015, when the commissions are formed victims', families are in dilemma how they should register the case-either as dead or disappeared.

**b) Absence of Law to Punish the Ones Responsible for Enforced
Disappearance**

Nepal has not criminalised the act of enforced disappearance which is regarded as the serious violation of human rights. Nepal lacks the legal provision to punish the ones involved in such acts. According to the report of CIEDP, it's a challenge for the commission to recommend for the criminal repression after the investigation in the absence of law to prosecute the ones involved in enforced disappearances. The commission has forwarded the declaration draft to the government of Nepal on 2072/10/18 to criminalise the act of enforced disappearance, not to put time frame for the conflict era cases and punish the ones responsible on enforced disappearance. There hasn't been any progress regarding it which is a hindrance for the victims to get justice from the state.

CHAPTER 7: SUMMARY AND CONCLUSION

In this chapter, the researcher has provided the summary of the entire research project. This chapter also provides a potential future research project idea that can be conducted in a different area of the community and has not been included in this research due to delimitations set forward by the researcher. This chapter discusses those limitations and also provides the conclusion of the research.

7.1 Summary

Overall, this study has tried to explore and analyze the approaches of transitional justice and how the victims are addressed through it and how do the locals or the victims experience it. Do they own it or feel that it is an elite led, externally driven without centralizing at the roots of victims' association in order to cater to their real needs, or do they feel it is victim centric? This research has discussed Global to Local approaches, state centric (top down) and victim centric (bottom up) approach, victim's needs – for e.g., Transitional vs. Social Justice, Social Rights vs. Economic Rights of the victims.

As a summary of all the chapters discussed above, Transitional Justice is a vital step and process to deal with past human rights violations especially regarding war or armed conflict. If it is neglected there is the possibility of generations opting for violence as their demands and needs aren't met and they aren't heard from the government. The victim's needs and rights for truth are violated which constitutes a trigger for conflict and lack of peace. Enquiry commissions and truth and reconciliation commission are the official mechanism adopted by countries to deal with the past and address the issue. Truth commissions are responsible for investigation and recommending cases. In Nepal's case, this has been a delayed case in the lack of political will victim's voices not being heard.

The then civil unrest of Nepal between 1996-2006 between the Maoist and State security forces resulted in deaths, disappearance, torture, and displacements. According to the record of the MoPR there were about 17,000 deaths and 1,300 missing and it does not consider the victims that were tortured and sexually abused. The CPA entailed taking the country towards post war peace building. Its major agendas included- disarmament, demobilization, and reintegration of Maoist combatants, drafting new constitution through constitution assembly, abolishment of monarchy, integration of Maoist army into Nepal army, and establishing transitional justice mechanism to look after human rights abuse during the insurgency period.

The peacebuilding began in Nepal in 2006 with the completion of the CPA and in 2007 with the establishment of an Interim Constitution. With the peace agreement in place, there was a strong commitment to address the grievances of the country. To this end, the political leaders at the time proposed forming the TRC and CIEDP commissions.

The Act to form the commissions was passed earlier in 2013, which was dissolved for not meeting the international standards and violating the international laws on human rights as it had provisioned for amnesty and reconciliation without justice grounds. It was highly rejected by the conflict victims and the various human right agencies. Jointly the victims of conflict petitioned the Supreme Court (SC) to amend the flaws in the CPA and to draft a new one fixing the flaws.

Initially, the TRC and the CIEDP were formed for a maximum period of two years with a possibility of extension for one additional year to complete the assigned tasks. However, in three years both commissions failed to deliver satisfactory results. They continue to suffer because of their limited mandates and the fact that the government financially controlled them. The victims group accused the commissions as incompetent and passive and have failed to deliver a result in a timely manner.

Victims' groups and civil society demanded the CPA be improvised in accordance with the SC directives of 2 January 2014, and 20 February 2015, related to transitional justice and war era crimes. Nepal's SC has ordered a series of rulings to implement legislation and practices that promote a fair judicial system in Nepal.

The extensions of the truth commissions' tenures were not very successful; they were limited to collecting complaints and not able to investigate them further. They did not involve victims on multiple levels, which makes the entire transitional justice process in Nepal state-centric elite-led (top down) rather than victim-centric (bottom up) approach. Transitional justice must be a "bottom-up" process where victims feel heard and supported by the state and have confidence in the work of the commissions. The formation of the TRC and CIEDP marks a significant step forward in the peace process in the country. However, it is not widely appreciated stating that it does not solve the dilemma of the household members of the missing persons. Victim's right to seek the truth, justice, and reconciliation should not be undermined. The commissions should create the victim's friendly regulation and work for long-lasting peace to make sure that the conflict does not repeat itself in future.

Since as early as 1980, transitional justice became a necessary component of the post-conflict transition and peacebuilding (Haider, 2016). In order to ensure a lasting peace, the CPA agreement of Nepal included transitional justice safeguards which included the requirement for an impartial inquiry into war crimes, appropriate relief program for those affected by violations and disappearances, and the prohibition of immunity. The CPA acknowledged that the political parties and civil society, as well as local organizations should come together to support and participate in order to make sure that transitional justice process becomes successful. Unfortunately, despite the good

intentions behind the transitional justice provisions, they were still not implemented by 2019. Transitional justice stakeholders in Nepal, including civil society and victims, international organizations, and the government, have very different visions of what transitional justice in Nepal should look like.

The CPA had a transformative agenda that could have provided justice to thousands of disappearance victims. However, more than ten years since the CPA was signed, the state has yet to deliver on its promises. Families of the missing are still suffering due to the unresolved effects of the conflict. The state attempts to conceal the reality of the conflict through a blanket amnesty, by protecting war criminals, and exacerbating the suffering of victims' families. If the victims appropriate needs are not considered seriously, there is a risk of a new and more devastating conflict. The families of those who have disappeared are living in a state of uncertainty, with their voices unheard and their sorrows unheeded. However, this is not the only case of gross violation that Nepal has experienced. Since as early as the sixteenth century, many groups have been kept out of social and political life, including women, Dalit, Adibasi Janajati people among many others. These inequalities is the primary cause of the decade-long armed conflict that has been fueled by the frustration and alienation of marginalized communities. Socio-economic discriminations and inequalities remain as major sources of discontent and conflict, with no clear political solutions in sight.

Bardiya district of Nepal experienced the highest cases of forced disappearances in the country during the civil unrest. The United Nations reports that Tharus, an indigenous population group comprising 52% of Bardiya District's population, has been particularly adversely inflicted by the civil war (OHCHR, 2008). According to OHCHR, the Tharus have been the primary victims of the state authorities, accounting

for more than 85% of those reported as disappeared. The OHCHR has documented 123 male victims, including 102 Tharus, 12 female victims, and 21 child victims, all of whom were Tharu in origin. Based on the information provided to OHCHR, the majority of missing persons were civilian villagers who had no connections whatsoever with the rebellion groups. The majority of them were ordinary people including farmers, students, and teachers, with some of them also being prominent Tharu activists. According to Robins (2011), the Nepalese Army in the area was interested in consolidating traditional power structures and eliminating Tharu activists. The conflict was seen by many as been started due to dispute over land between Tharu society and landlords belonging to the "high" caste (Robins, 2011). According to the 2008 report by OHCHR, the primary cause of civil unrest and maximum cases of disappearance in Bardiya is due land related disputes in addition to lesser opportunities for those that were affected by socio-economic marginalization (OHCHR, 2004; 2008).

During the first few years of Maoist insurgency in Nepal, over 1200 (this number constitutes about 65% of the total police stations in the country) police stations around the country were closed due to the attacks by the rebellion Maoist group, or because of the withdrawal of police personnel for security reasons (Human Rights Watch [HRW], 2008). On 23 November 2001, Maoists pulled out of the peace accord and strike the state security posts in 42 districts, resulting in the death of at least 30 military personnel and 50 police officers. The government not only announced a nationwide emergency state on 26 November and mobilized Royal Nepalese Army (RNA), now known as Nepal Army (NA) but also established Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), that allowed state forces to have wide authority to apprehend individuals engaged in terrorism. The ordinance also identified CPN-M as a "terrorist organization".

The involvement of the National Army did not significantly suppress the rebellion, but it did increase the civilian deaths during the civil war. The Informal Sector Service Centre (INSEC), a human right group in Nepal, reported that more than 13,000 Nepalese lost their lives in the conflict. More than 8,000 deaths, mostly of civilians, were reported after November 2001 when the army entered the conflict. The military was unable to occupy areas beyond their barracks, so they conducted regular sweeps into areas frequented by Maoists, often in retaliation for strikes by the rebellion group, most often apprehending and torturing civilians since the rebellions would have already been gone from the area prior to the military's arrival. Nepal Army's actions demonstrate that their tactics were not intended in favor or of the local community, but rather to create a sense of fear among the people of the community. The state police and the Armed Police Force were combined in November of 2003 and brought under Nepal Army's command to combat the rebellion group (HRW, 2008). Following this, the level of human rights violations rose significantly. According to the United Nations, Nepal had the largest annual rate of human disappeared cases in the world between 2003 and 2004 which included a total of over 1600 cases of disappearances during that period. Both the CPN-M and the state forces were responsible for gross human rights abuses and violations. On 1 February 2005, the then king of Nepal, Gyanendra Shah announced emergency state and assumed full executive power with the support of the army, claiming that the civilian government had not been able to bring the rebellion conflict situation under control. His regime arrested several social protestors, reporters, and representatives of human right organizations and initiated stringent limitations of social freedom.

After months of negotiations, the CPA was underwritten on 21 November 2006 between the state of Nepal and the rebellion the CPN-M party. This agreement

consolidated a number of commitments from prior accords and incorporated several global commitments to human rights. This agreement pledged to foster a climate in which Nepalese people can enjoy their fundamental rights and freedoms, and to ensure that these rights are safeguarded in the future in the event of any violations (HRW, 2008). The parties also agree to publish the whereabouts of those who were “deceased” or killed in the course of the conflict by the end of two months, as well as to establish a high-level TRC. United Nations Mission to Nepal (UNMIN) was established in Nepal in early 2007 and had a limited political mandate with primary focus on assistance to plan, prepare, and conduct elections, and monitoring aftermath of the conflict era.

The establishment of CPA fostered optimism that the human right situation in the country will continue to improve, similar to the post-ceasefire period. As the year 2007 progressed, however, it became increasingly clear that the state, including the police, had limited capacity to safeguard the lives and safety of the population, particularly in Terai, where Madheshi protesters began a sometimes-violent campaign to end discrimination. At times, demonstrations in the Terai turned violent. According to OHCHR, from January to October 2007, more than 130 civilians were killed, mostly in *terai* regions of the country. Those that were killed were mostly from the Madheshi Rebellion Opposition Party. In other parts of Nepal, particularly in the hilly and mountain areas, the umbrella branch of the CPN-M party, the Young Communist League (YCL) assumed public security duties from 2007 onwards. As a result, they were implicated in a range of criminal activities, which in some cases resulted in torture, and extremely gross abuses and violations of human rights (HRW, 2008). The armed conflict negotiation has been severely affected by the governing parties' inability to implement a significant number of provisions of the CPA and also due to the lack of addressing the concerns of those that were discriminated on the socio-economic basis.

In the context of the NA's continued power and influence, the political parties have also neglected to address security sector reform. The Maoists withdrew from power in September 2007, leading to the postponement of elections to a constituent assembly. The major parties together, which also included the CPN-M, announced Nepal as a republic state in December of 2007 and would be made official during the inaugural constituent assembly to be held after the April 10, 2008, general election. There was also a reiteration by the major political parties to form the TRC and the CIEDP.

The CPA did not explicitly use the term “transitional justice”, but it did commit to setting up a High-Level TRC to investigate the atrocities during conflict, to make sure that victims received assistance, and to facilitate reconciliation. The Parties mutually agreed that the TRC would investigate the perpetrators of serious violations abuses in order to foster a climate of reparations in the communities and the country as a whole. Revealing the facts surrounding these incidents is essential for most victims of human rights violations. Families of those who have disappeared are still unaware of the whereabouts of their loved ones. The truth is important for all parties involved, including their families and the wider community.

Truth seeking in the post-conflict context of Nepal has not yet been established. The state has financially accommodated the family members of the disappeared persons and those that are deceased in their records, but there is still lack of official acknowledgment as well as formal apology. In Nepal, where the traditional power structures of the Maoist regime and the State remain in place, the commissions may not be able to uncover the full extent of the truth, as the process is driven by powerful conflict actors. This is due to the power dynamics of the country, and the difficulty of constructing a unified narrative and understanding of past abuses.

The way the commissions will ascertain the truth and who will benefit from it will be determined by a variety of factors. These include the scope of the commissions' mandates, as well as the availability of time and personnel, political influence, and the manner in which evidence and analysis are collected. These elements may impede the completion of the final report, which could be very unsatisfactory. Clarification and guidance should be provided regarding the types of truth that should be examined, documented, and presented, for whom, and by which means. Currently, there is a lack of confidence that victims of the war will receive a satisfactory response, or that they will be able to obtain the full truth they are seeking.

Although some family activists welcomed the concept of reparations, it was an ideology that many families of the victims at the district level could not grasp fully. The government paid compensation to the family four times yet did not acknowledge it by issuing a formal apology that could have made a significant positive impact to the family members. Victims demand recognition along with monetary reparation which addresses broader social, economic, cultural, and psychological violations.

In order to ensure that human rights violations do not recur and to reduce the likelihood of future acts of violence, the transitional justice process must attend to the issues of cold social relationships and trauma in addition to other socioeconomic issues. Reparations, such as financial compensation, rehabilitation services, emotional relief, and genuine apology to victims and their family can embark on their complex needs and give the impression of a real desire for creating an atmosphere to survive.

It is also necessary to provide details on how victims of conflict will be able to access the reparation programs. The TRC and the CIEDP are mandated to make recommendations on reparations. Therefore, there is a need for a well-defined set of

actions for ensuring unbiased reparation for all victims regardless of whether or not they are associated with any commission. Reparation must be defined as a legal right that the victims and families can exercise but it must not be interpreted or used as an aid, welfare, or facility for them. These actions should be tailored to the priorities and needs of the victims. Additionally, it should be addressed comprehensively by including not only the individual reparations, but also focusing on both representative and social levels.

For effectively addressing the underlying roots of human rights violations of the past, a reparation strategy must attend to wider socio-economic and cultural infractions in connection with the structural violence that took place after the civil unrest, and thus classifying them by caste, ethnicity and economic status (International Center for Transitional Justice [ICTJ], 2012).

The establishment of the Interim Relief Program (IRP) has provided victims and families with a range of reliefs such as financial rewards, educational grants for the children of the suffered, medical compensations and care at government facilities, skill-based employment training, and compensation for property destroyed during the armed conflict. It should be noted that IRP has only been around for a short period of time and has not yet been able to address all victims' needs. The IRP's experiences have been reviewed as well as registered (ICTJ, 2012). For making sure that victims' socio-economic and cultural needs are met, it is important to not only have a reparation policy that is inclusive in nature but also to ensure that the development policies of the Government and donor agencies should align well with transitional justice (Robins, 2010).

Not only should the state make financial arrangements for the victims and their families but also establish an acceptable mechanism for recognizing and attending to the underlying consequences of past grievances.

The procedures of the commissions have failed to provide appropriate protection not only for the victims but also for the witnesses. The most significant factor is the level of trust. If there are no credible measures in place, victims of violence on both sides will not be able to speak freely and provide honest testaments. There should be safeguarding mechanisms in place that commissions must establish, including a guarantee of safety for victims and witnesses, evidence protection, and secure archiving.

The transitional justice process needs to put more emphasis on protecting victims and witnesses, and discrete established procedures must be put in place to guarantee this to occur.

Consultation plays an important role in shaping discussion and framing policy, yet it is lacking to happen victims' families and their associations. One of the key elements of a victim-centered approach to transitional justice involves consulting with victims at a broader level.

One of the major dissatisfactions of the victims' associations in Nepal is they were not consulted during the policy making phase of transitional justice. Their major complaint is policies are made by the state actors based in Kathmandu and victims from all around the country are not included in the process. It is essential to make sure that victims are included throughout the process from policy formulation to when it is actually put into practice. This will help enhance their representation and ensure that they can engage and assume responsibility in the transitional justice approach. A good starting point for

making sure that victims engage and participate in the process for building a more peaceful future is to design and implement a more comprehensive policy which guarantees a bottom-up approach in the transitional justice process rooted at the family level for attending to complex daily need of the victims and their family.

7.2 From Victims to Activists

“If victims' voices are silenced and justice is delayed, Nepal's transitional justice procedure will eventually receive universal jurisdiction.” said Ram Kumar Bhandari.

Ram hails from a family that's been affected by the forced disappearances. His father went missing in 2001 during the war in Nepal, and he has been a victim of imprisonment, threats, and physical abuse for speaking against the authorities responsible for the disappearance of his father. With more than a decade of experience in organizing community mobilization in Nepal, Ram currently serves as the chairman of the National Network of Families of Disappeared and Missing (NEFAD) and is one of the most vocal advocates at the federal level for victim-focused transitional justice and accountability.

Ram articulates:

The ten-year-long Nepalese civil war has left a lasting impact on the lives of many people, with many being affected from both sides. This unrest has resulted in a significant number of deaths, injuries, rape, torture, and displacement. However, the most significant legacy of the conflict is the lack of information regarding the current status of those missing during the conflict, as well as the inability to locate the remains of those who have passed away and to carry out the necessary rituals. Unfortunately, there is a lack of willingness from the appropriate parties to facilitate a transitional justice process that is focused

completely on the victims. Victims' needs are taken advantage of and used as means to remain in power by various political parties.

The constitution has made promises of social justice and compensation for victims, as well as granting investigative authority to the National Human Rights Commission (NHRC). However, the state appears to be attempting to limit such authority through an ordinance. On the other hand, the TRC and CIEDP reconstitution and appointment of officials remain uncertain. Furthermore, the victims are calling for a broader and more transparent transitional justice process, as well as wider consultation with them. Despite the government's lack of response to these requests, transitional justice issues remain a major focus of international attention and advocacy from human rights organizations. The various regimes have consistently disregarded the victims' needs throughout the entire process since 2006. For the past thirteen years, Nepal has not been to identify the primary reason of its conflict, construct a lasting peace, and establish a social system that is based on the principle of victim-centered justice.

Bhagiram Chaudhary is from Bardiya District of mid-west Nepal. He was directly victimized by enforced disappearances; State personnels were responsible for the disappearance of Bhagiram's elder brother and wife in 2003. He has over a decade of experience in grassroots mobilization, especially with the marginalized ethnical Tharu groups who were always targeted by the Army. One third of Nepal's conflict-related disappearances occurred from his community. He founded the Conflict Victims Committee (CVC) in his hometown and became a voice for those families of the disappeared. Bhagiram is now the general secretary of the NEFAD.

He has been the voice of his community, we can see him as a victim, activist and a leader representing programs and assisting various researchers coming to his village to

get information about the families of disappeared persons in Bardiya district. His and his community's struggle is ongoing. They are quite skeptical about the commissions and doubt if the government will ever provide them with social justice let alone legal justice. For him, transitional justice is not just about legal justice; it is more about socio-political justice and catering for those hundreds of people taken either by the army or Maoist party during the armed conflict. Until now they have not had any information about their status and on why they were taken from their homes.

In an interview with him in his village, he shared that Bardiya is the district to have the highest number of disappearances as it is the district with the majority of Tharu population. Around 52% of people in Bardiya district are Tharus. Maoist raised the issue of class and tried to get the support of local Tharus, as Tharus had been the victims of Kamaiya system, discriminated by the feudal lords and had very poor economic condition. Most of them lacked access to education as well. So, during the insurgency Maoist would come to their households and they had to provide food for them. Maoist mostly targeted the feudal lords. In this situation, state armies suspected Tharus as Maoist and they took them from homes as a suspect and never gave the families the information of their whereabouts. He shared that they have formed a workforce on enforced disappearance and filed a case in Geneva against 198 people in 2009.

Nepal should take appropriate steps to meet the local and international legal obligations as a responsible state which includes adhering to SC's judgments on adhering to appropriate standards, implementing the recommendations of NHRC, and following credible transitional justice practices in a broader dialogue with victims.

Prachanda, the then rebellion leader, and Sher Bahadur Deuba (the state leader whose regime saw numerous cases of abuse) must take immediate initiatives at the domestic level to meet the needs of the victims. If they opened their statements to the nation by

apologizing for past errors, it would be a positive first step.

Sarita Chaudhary from Bardiya, whose father was enforced disappeared by police has been a proponent leader of victims of disappearance and working on helping them earn a little in the absence of the breadwinners at home. They never told Sarita where her father had been taken or what had happened to him; however, Sarita believes he was killed in a police custody. The next time the police came was to search Sarita's house for any traces of Maoist activity. They did not find anything, but a couple of days later they came back again to arrest her mother.

The siblings waited for five days without knowing whether their mother would return. When the mother was permitted to return home, Sarita discovered that her mother had been tortured by the police while being questioned for alleged Maoist affiliations. None of Sarita's family members were associated with either the Maoist party or the rebellion. Now Sarita works as a member of Bardiya Conflict Victims Committee, fighting for justice for her father and hundreds of other missing people from Bardiya.

Sushila Chaudhary is directly victimized by civil unrest of Nepal. She was displaced and suffered throughout the conflict. Her own sister was sexually abused by state personnels and later she went missing. Her entire family including brother, father and mother were arrested and tortured by state forces. She is one of the strongest voices for families of victims in her hometown and in the region, especially for those women who have little voice and agency in the political processes. She founded the Center for Conflict Affected Peoples' Concerns in Dang District and is now a central committee member of the NEFAD.

7.3 Victims Associations

Like Nepal's society, the victims of armed civil conflict are characterized by a wide

variation of ethnic and socio-economic backgrounds, whose suffering was caused by both the state and the Maoist parties involved in the war. Due to the fact that victims come from different backgrounds and have different political allegiances, it can be hard for victims to articulate a unified view of their grievances and demands in transitional justice. Various victim organizations, including NEFAD, have sought to bridge the wartime divides by working towards shared objectives of truth, justice, reparations, and reconciliation. As one victim put it, "We share the same pain."

In Kathmandu, the unified victim's front has enabled them to obtain the necessary support and resources for making sure that the voices are heard. However, victims from remote communities remain discriminated against, particularly those who have a history of re-victimization in other areas of Nepalese society. Issues such as socio-economic status, literacy and linguistic hurdles limit mainstream dialogue and access to resources and justice. For example, the Tharus population have experienced violence exacerbating their long-standing history of marginalization and hindering their ability to seek justice.

As Simon Robins found in his study that the law is either used to Tharus' advantage or made invisible to them because they don't have access to it. Despite this, some victims in areas other than Kathmandu have been able to establish local victim institutions that have been successful in raising awareness and building victim capacity. Victims were also represented at the district levels across the country, which have been able to identify conflict-related victims and provide them with temporary financial assistance. In 2016, a significant number of victims contributed to the TRC's compilation of conflict era complaints.

Victims have formed their association by uniting the victims from both fighting groups of the war. For families affected by enforced disappearances, there are primarily two

associations, one being NEFAD and the other CVCP. NEFAD is a district-based organization representing the families of missing persons which aims to advocate for and obtain appropriate relief for the victims. The network is completely victim family based, as far as its activities (the purpose) and its leadership (the network's representatives) are concerned. It is not affiliated with any non-governmental organization or other state entities and seeks to collaborate with all organizations with the same objectives. The network consults with families on a regular basis about its work and receives feedback on its activities.

Today, there are many other family associations in 60 districts across Nepal who have some form of necessity and feeling of solidarity. There are well-established district-based organizations in 30 districts, as well as regional coordinators and district contact points in all districts and provinces. These organizations are properly coordinated groups such as Conflict Affected Concern Societies in Dang and Sunsari, all of which are founding members of the NEFAD. NEFAD is one of the driving forces behind the grass-roots movements and family struggles across the nation.

The conflict victims are determined not to work with the TRC commission on any of the other tasks because they do not trust its verbal commitment that the transitional justice would be "victims-centric". The CVCP has established pre-conditions for the commission to convene in order to secure its endorsement and these include vetting of the members of the Local Peace Committee, which is responsible for collecting complaints from conflict victims.

The commission sought to establish an oversight mechanism to monitor the registration of cases from the conflict victims at the district level. However, the victims have

reservations regarding the composition of the committee due to the presence of representatives from political parties.

They have requested witness protection; psychosocial education for its staff to address the necessity of the victims; truth establishment from the information collected; public hearing; robust action plans; arrangement of experts and resources; and collaboration with local communities while handling conflict-related cases. "We would like to make it clear that our assistance to the commission is contingent upon its working practices," read the release. The alliance has reaffirmed its commitment to working closely with the commission to advance the transition justice process. "We cannot support the commission, which has not provided us with sufficient evidence to support our hope that the process will be victim-centric," read the statement.

7.4 National and International Organizations and Victims Movement

Civil Society Organizations stress that bringing perpetrators of serious war crimes to justice should be prioritized. They see a lack of effective prosecution as a potential trigger for re-occurrence of violence. NHRC has highlighted the dire consequences of disregarding the victims' demands, asserting that providing justice for them is essential for the setting up of a law and order within the state. On the other hand, the Nepali Government, which officially holds transitional justice in its hands, would rather "let things go." One of the most notable is the attempt by political leaders to impose a blanket war crimes amnesty. The reconciliation efforts of the government have also been perceived globally as well as locally as coerced rather than consensual by the society and victims. Due to this situation, the implementation of transitional justice is uncertain. Instead of reaching out to victims and their families to discuss the best course of action, agencies have focused on rigid concepts of accountability rather than

addressing the concerns of those affected by conflict.

The transitional justice process of Nepal has taken a slow path and the approach it has adopted has not gained support of the victims, national and international community. Skepticism around it as not being an independent entity and guided by strong political will is gaining momentum. The CPA and Interim constitution have mentioned forming the TRC mechanism within 60 days took almost 10 years to establish and in the last four years both the commissions did not prove to work efficiently.

7.5 Government's Approach

The Interim Relief Program was the first transitional justice initiative launched by the Nepalese government to aid with reparations, for example. "The government's idea of reparation is very limited," said one victim leader. "They only think about monetary compensation." This is largely due to the relative simplicity of distributing funds to victims compared to the difficulties of prosecuting perpetrators and establishing Truth-Finding and Reconciliation commissions in the early post-war period. Families of victims were awarded between one to two lakh Nepali Rupees (about \$1,000 to \$2,000 USD respectively), based on the severity of the cases. The IRRP had serious shortcomings and was not intended to represent transitional justice. Apart from being grossly inadequate in terms of compensation, the IRRP excluded victims of "torture" because there was insufficient legislation criminalizing it. Sexual violence crimes were not considered as war crimes and were left out of the transitional justice process without providing any compensations. The argument was to treat the sexual abuse as ordinary judicial crime, but this had flaws for several reasons, including the fact rape cases should have been registered in the judicial system within 60 days, making it virtually impossible to pursue charges of sexual assault during the conflict. The ratification of

the TRC CIEDP bill faced both national and international criticisms throughout its various stages of implementation culminating in its final promulgation in May 2014. SC had already announced that the amnesty clause as unconstitutional in 2013, prior to its transformation into an Act the following year. After the ratification, 234 victims filed an appeal before SC challenging the constitutionality of the ordinance.

7.6 Conclusion

The explanation of purpose of transitional justice is implied instead of clearly stating its principles and applications. From the point of view of survivors of civil unrest and abuses, justice is not only a form of reparation for the crimes committed but also as an approach that would help recover the wounds and build a peaceful and prosperous outlook (Lambourne, 2011). Despite this, only a small number of transitional justice scholars contemplate peace and reconciliation objectives, and their research remains largely focused democratization, law, and order instead of actual peacebuilding.

Post conflict justice, compensation, and reconciliation are challenging and often take years to accomplish. However, human rights violations that go unchecked lead to social unrest and often fuel renewed violence. Transitional justice mechanisms constitute recognizing, charging, amending, and forgiving wrongdoing during the transitional time of post-conflict or post-authoritarian state reconstruction It is essential to recognize the differences in situations for various societies that have experienced conflicts in some way and necessitates differing approaches to resolving the grievances. However, knowledge of other societies from other parts of the world and their experiences with relating challenges of conflict justice could assist in designing and implementing an effective transitional justice approach. But transitional justice in any case should be contextualized and localized as the nature of the conflict and the population and

structures if affects at different regions of the world or in different countries might be very different.

Initially, the TRC and the CIEDP were formed for a maximum period of two years with a possibility of extension for one additional year to complete the assigned tasks. However, in three years both commissions failed to deliver satisfactory results. They continue to suffer because of their limited mandates and the fact that the government financially controlled them. The victims group accused the commissions as incompetent and passive and have failed to deliver a result in a timely manner.

The majority of the enforced disappearances are from the province number 7 constituting Bardiya district with highest number of disappeared from the country to the other highest districts being Banke, Dang and Rolpa consecutively. Bardiya district alone has more than 200 disappeared 90 percent of them are from the ethnic Tharu group. According to the reports of the UN and other international organizations Tharus were mostly targeted in the suspect of Maoist as the Maoist leaders the According to the recent data from CIEDP Nepal, obtained from their preliminary investigation 80% of the total number of disappeared were enforcedly disappeared by the state army and other 20% are from the then Maoist party of Nepal.

The narratives of the victims of families of enforced disappeared during armed conflict talks about the complex issue of transitional justice and the consequence of delayed and slow path it has adopted in Nepal. It brings out the prolonged struggle, cultural, social, psychological, and economic rights and needs of the victims.

This research discusses about the emerging debate within the transitional justice scholarship that places emphasis on 'victim-centered' approach. This PhD work aims to get to the bottom of what happened to the victims after the armed conflict in Nepal

and how they were dealing with the consequences of the past abuses and violence. For this reason, the researcher has taken a bottom-up stance in the study, focusing on the needs and viewpoints of the victims from marginalized communities particularly from relatively remote areas and those that have faced socio-economic discriminations. This study has analyzed the ways in which victims can exercise agency in their daily lives and in their interactions with both the community and state. It emphasizes on the global structuring of transitional justice dialogue and its relevance in Nepal's context. Surprisingly, this interpretation has failed to effectively attend to victims' needs and demands as well as to foster their participation in a genuine discourse. The primary research question of this dissertation has, therefore, been to study the transitional justice process of Nepal and to examine how it interacts with the victims of disappearance of Nepal.

The victims of Nepal have drawn the attention of various outside stakeholders whose engagement on discourse with victims on transitional justice has unfolded both challenges as well as solutions in the victims' understanding and access to justice. Thus, the study has looked at how these external influences and hierarchical approaches influence victims' perceptions of personal identity and avenues for action by constructing a more comprehensive understanding about the victims' narratives on how well they align or deviate from the "standard" transitional justice policies. Therefore, one of the research objectives of this work has been to study the Nepal's Transitional Justice Process discussed below.

The Nepalese transitional justice process has been delayed, exacerbating the issue of victims, and failing to meet their needs; this has resulted in increased frustration and doubtfulness with the state's policy and its institutions. The government's inability to address the grievances of victims has a detrimental effect on the likelihood of future

violence. In summary, for the peaceful transition, the researcher recommends addressing the past with honesty, compassion, and urgency, with the victim-centric approach to peace-building and transitional justice at the forefront.

7.6.1 Victims' Narratives

Although there are varied definitions of victimhood in different contexts, this study has attempted to define it through victims' own lenses by allowing them to appropriately recognize their personal identity based on their interactions and relationships with others. Even though the understanding and definitions of victimhood have evolved over time, the dreadful impacts of war in their lives continue to exist in the form of distress and suffering.

During this study, the victims revealed that they were constantly traumatized about their past grievances by those in their own family and society which suggests that victimhood is not always caused by external factors outside of their personal and safe spaces but surprisingly from within those spaces as well.

The other important thing to consider when interpreting victimhood is the impact of historical socio-economic exclusion and marginalization of victims including those related to gender, caste, and religion among several others. Unfortunately, the transitional justice discourse tends to disregard some of these factors, for example, the gender issue. The other overarching issue is how the state prioritizes their closer connections neglecting those that are in actual and immediate needs. This has led to evolving understanding and redefinition of victimhood.

On the one hand, it is important for the victims to establish their identity as an agent so that they can properly negotiate with the state. On the other hand, it should be noted

that the mainstream transitional justice discourse views victimhood and agency as opposites.

In summary, this research work examines the complex nature of victimhood that takes various forms within varied socio-economic contexts. It also argues that victims are exploited not only during the war but also during the aftermath of war. The research questions if the knowledge production in developing nations like Nepal where the people's viewpoints are suppressed is still tenable.

7.6.2 Justice

This research not only addresses how the victims' perception of justice differs from the mainstream transitional justice notion but also the reason behind it.

Victims' interpretation of victimhood differs due to historical socio-economic exclusion and marginalization as discussed earlier. This occurs due to the fact that they have experienced the war in different ways and have suffered different repercussions from it. Although it necessitates to align transitional justice approach with the varying needs of the post conflict environment, this does not usually happen as the victims are barred from justice due to hierarchies and exclusion.

The deviation of victims' interpretation from the mainstream occurs as they do not really care or understand their rights as well as judicial process and instead focus on their own lives or needs. The other reason for this discrepancy is because of the community overlooking the historically rooted socio-economic exclusion. Others argue that the mainstream approach lacks making appropriate personal and social connections that align with the local needs and justice for the victims. As a result, victims feel isolated and therefore, deny involvement in the transitional justice system and mechanism. This research work argues that the approach taken up by the transitional

justice group in Nepal is limited and inadequate. It advocates the need for a more victim-centric approach that would allow victims to establish their own apprehension of justice so that their complex needs and war-time experience can be appropriately addressed. Contemporary scholars argue that the approach to justice must be bottom-up and localized in nature with emphasis placed on the victims in the judicial proceedings (McEvoy & McGregor, 2008; Robins, 2012).

It is important to recognize that this study is not about re-designing or framing an alternative to the mainstream transitional justice approach. It does, however, urge a need for implementing a unique approach that underpins the importance of varied identities, complex needs, and locale of the victims. The research aims to make a unique contribution that may help advance the understanding of victims living in communities emerging from past violence.

This research provides an assertion that while the mainstream transitional justice approach has been largely top-down in nature and instituted externally, there is a clear need for formulating it in a manner that is local and central to the victims as well as their needs. This study argues that the government has taken a total control over the transitional justice processes in Nepal, providing limited opportunities for victims to express, influence and engage in these processes. In summary, this work reveals the unsuccessful nature of transitional justice approach in Nepal as experienced by the victims largely because the approach has been imposed externally upon them without an effort to adapt to complex needs and priorities of the victims.

Interestingly, this research work found that the lack of victim-centric approach of justice encouraged the victims to establish their own local victim organization and network which not only enabled them to understand and cater for their complex needs

and experience but also to make appropriate connections and to foster fruitful dialogues with the transitional justice community.

The researcher is hopeful that the shortcomings and preconceptions laid out in this research work will also be relevant for building policy advocacy after war with the transitional justice community in other countries as well. This work will also be valuable for other researchers to make appropriate personal and social connections that align with the local needs and justice for the victims making it more victim-centric rather than imposing it externally in community-oriented societies like Nepal.

This research work is particularly focused on the narratives of the enforced disappearance and therefore, one of the limitations of this work is that it does not include study related to deceased and their families, children, abducted, injured etc. The other limitation is that the study was conducted in a limited geographical location that include Bardiya, Chitwan, Kailali and Kathmandu districts of Nepal are selected as the research site. These districts were selected because of highest number of enforced disappearances according to the provincial data of CIEDP in 2019.

In conclusion, this research advocates the need for the mainstream transitional justice approach to make appropriate personal and social connections that align with the local needs and justice for the victims so that they do not feel isolated and can adhere for supporting the transitional justice system and process. It also argues that the approach taken up by the transitional justice group in Nepal so far is limited and inadequate. It advocates the need for a more victim-centric approach that would allow victims to establish their own apprehension of justice so that their complex needs and war-time experience can be appropriately addressed.

APPENDIX A

GLOSSARY

Adivasi Janjatis	Indigenous ethnic communities, originally not Hindu, who have distinct cultures and languages and trace their connections to specific geographical areas.
Bardiya	Rural, remote district located in the mid-western region of Nepal.
B.S.	Abbreviation for Bikram Sambat—a commonly used calendar system in Nepal.
Jana Sarkar	The so-called People’s Government—a term used by members of the Maoist party during the insurgency.
Jana Andolan	People’s movement.
Melmilap	Reconciliation.
Muluki Ain	National Legal Code.
Sena	Army.
Terai	The entire region that runs from east to west on the southern part of Nepal and is adjacent to India.
Tharu	An ethnic group indigenous to the Terai in southern Nepal.
Satya	Truth.
Zamindar	Landlord

APPENDIX B

Interview questions for the participants

Personal Profile

Age
Sex
Education
Occupation
Number of family members
Income source
Annual Income of the family

1. How did you experience armed conflict in Nepal?
2. Who was disappeared from your family? (Details of the person disappeared- age, sex, marital status, occupation, suspect of the reason why he/she was taken? Who took them? (Army or Maoist?))
3. When and from where they were taken?
4. Did you hear from them ever since?
5. Did you get any information about them?
6. What did you do to find them? Where did you go? What was the response from there? Were they supportive towards you?
7. How has the disappearance of your family member affected you? In what areas of life? (Economic? psychological? social? Legal?)
8. If you have children- how has it affected them?

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9. Do you know what mechanisms does the government have to address the victims of enforced disappearance in Nepal?
10. Did you get the interim relief from the Government? What amount did you get? And in how many years? Did you share that money with anyone?
11. Are you aware of the transitional justice process of Nepal?
12. Did you participate in any of its process?
13. Where did you register your case? When? What have you heard from them until now?
14. How is it catering to your needs?
15. What benefits did you get until now from the government?

Victims' Participation in the Transitional Justice Process

16. Are you involved in any of the victims' associations? From when? What activities do you do from your association or organization?
17. Were you consulted by government to discuss about the TRC Bill and formation of commissions?
18. Were you consulted by the truth and reconciliation commission (Commission on the Investigation of enforced Disappearance –CIEDP) in any of its process?

19. What do you think are the hindrances in the transitional justice process of Nepal?
20. Who do you think is the government listening to in the transitional justice process?
21. What kind of challenges are you facing in the transitional justice process of Nepal?
22. Do you think it is victim centric?
23. If not- what would look like a victim centric model? And why is it important to have a victim centric model in your opinion?

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