

NEPAL

# “We Cannot Forget”

Truth and Memory in Post-Conflict Nepal

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International Center for Transitional Justice  
and Martin Chautari

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### **About ICTJ**

About ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org)

### **About Martin Chautari**

Since its inception in 1991, Martin Chautari (MC) has been enhancing the quality of public dialogue and the public sphere in Nepal through discussion, research, publication, mentoring and resource sharing. Chautari's discussion is the oldest, continuously running series related to Nepal organized by any institution anywhere in the world. All five components feed into each other and form an intrinsic part of MC's primary goal: strengthening the social contract between the state and citizens, and expanding and making inclusive the public sphere in Nepal. For more information, visit [www.martinchautari.org.np](http://www.martinchautari.org.np)

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## ACRONYMS

CIEDP	Commission on Investigation of Enforced Disappeared Person
CPA	Comprehensive Peace Accord
CPN-M	Communist Party of Nepal-Maoist
CPN-UML	Communist Party of Nepal(Unified Marxist-Leninist)
ICTJ	International Center for Transitional Justice
INGO	International Non-Governmental Organizations
NC	Nepali Congress
NGO	Non-Governmental Organizations
PLA	People’s Liberation Army
TRC	Truth and Reconciliation Commission
UN	United Nations
UCPN-M	Unified Communist Party of Nepal-Maoist
VDC	Village Development Committee

## Executive Summary

In the context of an ongoing truth-seeking process in Nepal, the manner in which victims conceptualize truth and relate it to justice is instructive. This is particularly true as the country’s two truth commissions, the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP), advance in their efforts to provide victims with truth about past events. Victims’ conceptualizations about the value and meaning of truth illustrate the importance of why “it is not enough to know *what* has been done, but also to know what it *means* to various actors in society.”<sup>1</sup> In trying to understand different perceptions of truth in various districts of Nepal, it is clear that previous and present historical and political contexts have informed the way in which the past is understood by various actors, at all levels.

Interviews of victims of human rights violations and other serious crimes committed during the 1996–2006 armed conflict conducted from 2014–2015 for this study have revealed important information about the views of this fundamental constituency regarding truth-seeking efforts in Nepal. Victims clearly value the identification of perpetrators and explanations for the causes that led to violations, the circumstances and facts of violations, and the fate and whereabouts of the forcibly disappeared. For some, especially victims of sexual violence, truth is more complicated, and effort will be needed to help victims to overcome societal stigma and use existing opportunities to break down harmful misconceptions about their experiences.

Historically and politically situated truth-seeking practices reveal the importance that victims place on not only situating their individual experiences within the broader context of conflict, but also the significance of acknowledgement of the harms they and their loved ones endured. Making public the individual and collective stories of sacrifice and contribution means victims’ gaining respect, a sense of dignity, and self-worth. Further, there are clear demands for prosecution and reparative measures to hold perpetrators to account and get to the root of victims’ current suffering.

Obstacles to the full realization of meaningful truth-seeking efforts remain. On the national level, policy makers and other government officials seem to have limited understanding of victims’ needs and experiences, and in many cases they are willing to forego further search for the truth in deals to resolve other political disputes. At more regional and local levels, while government actors are much better informed about victims’ experiences and expectations, they also tend to rely on patronage networks. This has led to the perception among victims that many of those receiving benefits are not “real” victims but simply have close connections to local elites. Lack of outreach and poor decentralization efforts may also impede

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1. Sajjad, Tazreena. *Transitional Justice in South Asia: A Study of Afghanistan and Nepal* (Oxon: Routledge, 2013).

inclusive truth seeking if concerted efforts are not made to include those in even the most far-reaching districts.

For those affected by the conflict who were historically marginalized, memorialization as a form of reparation and truth telling is an important option that respondents tend to believe would help garner respect and legitimacy for victims, their relatives, and communities, locally and nationally. While the effects on social reconciliation and healing are yet to be fully explored, there are indications that the creation of meaningful, victim-centered memorials designed in consultation with victims and communities could be an important way to both acknowledge victims’ diverse experiences and supplement the truth-seeking, criminal justice, and reparative measures victims seek.

It must be noted that because a limited number of districts formed the core of this research, there are limitations to the extent to which these findings may apply to the larger population. Further, while some perpetrators were interviewed, the perspectives of perpetrators still need to be explored in more depth by future research.

Despite these limitations, these findings represent a valuable starting point for engaging in reflections about Nepal’s long transition to sustainable peace. More thinking can be done about how to evaluate truth seeking and memorialization in Nepal at both the local and national levels.

Based on the findings in this report, we make the following recommendations in support of victims’ right to truth in Nepal:

#### **To the TRC and the CIEDP**

- **Fully and effectively implement their mandates and ensure the vindication of victims’ rights.**
- **Educate the public about the context and causes of violations, so as to encourage prevention and non-repetition.**
- **Disseminate information about the circumstances, motivations, methodologies, and consequences of violations in locally relevant languages.**
- **Implement effective channels to ensure that civil society organizations, victims’ groups, and other key stakeholders can contribute to the work of the TRC and the CIEDP;** include and encourage their active engagement, involvement, and participation throughout the process.
- **Hold sessions and hearings in all parts of Nepal, including remote and rural locations,** so as to engage all Nepalis in truth seeking. Make efforts to reach victims residing in remote areas, those who may not know about the commissions’ mandate, and those that may be more vulnerable to undue pressure from perpetrators or their associates not to participate, in order to provide them with a safe opportunity to file a claim if they so wish.
- **Encourage memorials and commemorative events that incorporate victims’ names.** Recommend memorialization processes that both assist victims in articulating their experiences of human rights violations



and abuses and create space to promote learning from the past and non-repetition in the future.

### To Nepali Policy Makers

- **Provide strong political support and adequate state resources to facilitate the realization of the right to truth for victims of serious human rights violations and other crimes under international law during the 1996–2006 armed conflict in Nepal.**
- **Establish opportunities for meaningful participation of victims and civil society in crafting and implementing credible truth-seeking measures, including the TRC and CIEDP.** Ensure transparency in the process in order to build society's trust in the TRC and the CIEDP.
- **Conduct public awareness campaigns on both the legal remedies available to those who wish to pursue criminal cases and how to access legal assistance.**
- **Publicly recognize victims as citizens harmed as a result of human rights violations.**
- **Issue an official apology to victims for human rights violations experienced at the hands of state actors as well as for the state's failure to protect victims of violations committed by non-state armed groups.** The specifics of the apology should be decided on in consultation with victims' groups, and it should be issued as part of a prominent public event, preferably attended by representatives of these groups.

### To Civil Society

- **Promote public awareness and shape opinions in Nepal towards promoting the right to truth and accountability for serious international human rights and humanitarian law violations through the judiciary, the TRC, and the CIEDP.**
- **Pressure government to ensure it complies with the Supreme Court ruling not to allow amnesty for serious human rights violations.**
- **Promote community-based memory work;** victims and local communities should have ownership of the memorialization process and, therefore, be involved in deciding on the location, form, and construction of memorials. Working together on memorials can encourage collaboration among opposing parties in the conflict and assist in developing debate around what really happened during the conflict. Memorials could include museums or documentation centers at the local and regional levels and at sites of violence.
- **Support the prosecution of emblematic cases involving those responsible for the worst offences.**
- **Engage critically and constructively in the work of the TRC and the CIEDP by contributing insights and information, facilitating access to victims, and monitoring and observing.**

## Introduction

There is widespread misunderstanding of transitional justice in Nepal, and relevant policy is often motivated by the interests of political leaders and other powerful actors, like the Nepal Army, with little regard for the rights and needs of victims. There continues to be resistance to criminal investigations and prosecutions of conflict-related human rights violations by the main political parties and the security forces. Authorities promote, at best, a version of transitional justice that is limited to an ill-defined notion of truth and an emphasis on forms of reconciliation and relief for victims wherein protection of perpetrators is privileged over victims’ right to remedy. In contrast, civil society is more focused on criminal justice and individual accountability, with less attention paid to other components of transitional justice, including truth seeking, reparations, and institutional reform. The country’s Truth and Reconciliation Commission, established in 2015—eight years after the agreed-on date in the Comprehensive Peace Agreement (CPA)—continues to form the battleground for opposing views, often resulting in distorted and politicized policy positions by stakeholders on all sides.

Transitional justice, including issues relating to the right to truth, has otherwise attracted little interest among broader constituencies. There is little to no attention paid to these issues by Nepali scholars and academics, and while the media frequently covers transitional justice stories (often relating to individual cases), they have yet to significantly contribute much to generating public awareness or debate on the issue. The effect of the narrow discourse and lack of broader public engagement risks limiting the potential value of truth-seeking processes in Nepal. Transitional justice issues are generally not on the agenda of those working in governance or security.

The limited nature of debates on transitional justice in Nepal has led to the acute socio-economic needs of many victims and their families being overlooked. Many of those who are most in need, including victims of torture and sexual and gender-based violence, have thus far been excluded from the government’s Interim Relief Program and the proposed psychosocial support program.

This research paper aims to broaden the understanding and awareness of what truth in transitional justice in Nepal actually means for diverse sets of stakeholders. It looks at the socio-political and cultural contexts in which past and current truth-seeking practices can be situated. It aims to identify the meaning of truth seeking in relation to the 1996–2006 armed conflict and the Jana and Madhesh Andolans (people’s movements) among selected constituencies of national stakeholders.

## Methodology

This research had three components: first, a desk study of past official and unofficial truth-seeking initiatives and field research into memorialization practices in Nepal; second, analysis of truth and interpretations of truth in the framework of Nepali political culture; and last, interviews with a selected number of stakeholders on the concept of truth in relation to the 10-year conflict and the Jana and Madhesh Andolans.<sup>2</sup> Types of stakeholders interviewed included victims, local and national civil society organizations, ex-combatants of the People's Liberation Army (PLA), local and national political leaders and intellectuals. The research was based on a literature review, focus-group discussions, and in-depth, semi-structured interviews.

Six districts (and regions) were covered in the research. For the study of memorialization, these included: Rukum (mid-western hill region), Jhapa (eastern Nepal) and Bardiya (south west plains area). The study of the meanings of truth included: Kapilvastu (western plains of the country), Dailekh (hill area, mid-Western Nepal), and Achham (hill area, far-western Nepal). Additional interviews were conducted in Surkhet and in Dhanusha.

Districts were selected based on their geographic representation and numbers of conflict-affected victims. Bardiya was selected for having the highest number of enforced disappearances in the country, while Rukum was chosen as a Maoist stronghold and for its high number of conflict victims. Dailekh and Achham were selected due to their historical and ongoing neglect by state and development actors as well as the impact of the conflict. Jhapa served as an example of a district from the east. Kapilvastu, a district in the plains, was selected as important because of the severity of the conflict, the Madhes movement in 2007, and the confrontation between the state, the Communist Party of Nepal-Maoist (CPN-M), and the retaliation groups (*pratikar*) there. Interviews were also conducted in Kathmandu.

In total, 14 focus group discussions were undertaken and 79 in-depth interviews, ranging in length from 30 minutes to 1.5 hours. Of the individuals interviewed, 38 percent were women. Interviewees included conflict victims, political party leaders, civil society leaders, academics, ex-CPN-M, government officials, and workers from various nongovernmental organizations (NGOs). Interviews and district visits spanned the months of December 2014 through April 2015.

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2. The Jana Andolans (People's Movements) refer to both the 1990 and 2006 People's Movements for Democracy, while the Madhesh Andolan refers to the people's movement in the Madhes in 2007.

## Historical Context and Political Culture

Nepal’s 10-year internal armed conflict between state security forces and the CPN-M lasted from 1996 to 2006 and affected tens of thousands of people. Unlawful killings, enforced disappearances, arbitrary detention, and cruel, inhuman, and degrading treatment, such as torture, rape and other forms of sexual violence, were widespread and committed by all parties to the conflict. According to the UN Office of the High Commissioner for Human Rights, up to 9,000 serious violations of international human rights or humanitarian law may have been committed, although there is a widely acknowledged problem of underreporting, particularly in relation to cases of sexual violence. Many also suffered disruptions to their education, health care, and basic government services; an exacerbation of existing economic hardships; insecurity; and fear.

Dalits (the lowest socioeconomic group in Nepal’s caste hierarchy) and members of indigenous nationalities or ethnic groups (Janjatis) were victims of human rights abuses in disproportionate numbers. Their victimization was rooted in long-standing caste and ethnic discrimination. In the context of the armed conflict, Dalits and Janjatis were particularly vulnerable to human rights abuses because, on the one hand, the state suspected them of being sympathetic to insurgents, while, at the same time, they were vulnerable to coercion to join or support the CPN-M and its armed forces. Despite efforts to address discrimination, these groups continue to represent the majority of the “ultra poor” in Nepal and remain vulnerable to exclusion and exploitation.

In 2006, the CPA brought an end to the conflict and provided a road map for the peace process. In addition to a broad agreement on a progressive, democratic restructuring of the state and socio-economic cultural transformation, the CPA included various commitments to pursue the right to truth. Specifically,

- Article 5.2.5: “Both sides agree to set up with mutual consent a High-level Truth and Reconciliation Commission in order to probe into those involved in serious violation of human rights and crime against humanity in the course of the armed conflict for creating an atmosphere for reconciliation in the society.”
- Article 5.2.3: “Both sides agree to make public within 60 days of the signing of the agreement the correct and full names and addresses of the people who ‘disappeared’ or were killed during the conflict and convey such details to the family members.”

These commitments are reiterated in the 2007 Interim Constitution. Article 33(s) and Article 33 (q), for example, include the provision of relief to victims’ families on the basis of the findings of a commission mandated to investigate cases of conflict-related enforced disappearances.<sup>3</sup> These commitments have been reinforced by

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3. Interim Constitution of Nepal 2063 (2007), Article 304 (2) mentions that: “The activities under peace process conducted according to the Interim Constitution 2007 shall be considered to be conducted according to this constitution.” Additionally, the constitution mentions conflict victims under “Right to Social Justice” in Article 42 (5): “The families of martyrs who sacrificed their lives in the people’s movements, armed conflicts and revolutions for a democratic progressive change in Nepal, the families of those who were disappeared, persons who fought for democracy, victims of conflict and the displaced, persons who

Supreme Court judgments endorsing the right of victims to remedy, including the right to truth, and relief measures to be taken without prejudice to the rights of victims to seek judicial remedy.

Despite such commitments and obligations, there has been little progress and much resistance to establishing genuine justice processes. The debates on the right to truth and truth seeking in Nepal have primarily centered on drafting mandates for the Commission on Truth and Reconciliation (TRC) and Commission of Investigation on Enforced Disappeared Persons (CIEDP).<sup>4</sup> The debates have focused narrowly on issues related to amnesties and criminal investigations of conflict-related human rights abuses. Further, so far only a relatively narrow constituency of two broadly opposing sides has been involved debates on the truth commissions. Among national and international NGOs, human rights lawyers, and victims' groups, the dominant discourse has focused on the demand for individual criminal accountability, while government leaders and representatives of the major political parties and security forces have worked to ensure that criminal prosecution and trials are completely off the table.

One reason for the reluctance of government and security forces to advance transitional justice is that, since the CPA was signed, political power has been shared mostly by parties who were directly involved in the conflict, and many in senior leadership positions may be liable for some of the atrocities that were committed. Likewise, because the security forces have not been vetted, many within their ranks may be liable for serious violations. Thus, various government and security force actors have acted to delay or obstruct any process that may result in meaningful truth or criminal accountability.

Yet, the updated UN Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity reaffirms the inalienable right to know the truth about human rights violations and serious crimes under international law. The right to truth implies knowing the full and complete truth about events that transpired, including the participants, the specific circumstances in which violations took place, and the reasons for them.<sup>5</sup> It is a right of victims, and also the broader society, to have a full accounting of human rights violations, their causes, and consequences<sup>6</sup>.

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were physically maimed, the wounded and the victims, shall have the right with priority, as provided for by law, to education, health, employment, housing and social security, with justice and appropriate respect.”

4. The two commissions were established under the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (2014). The TRC is mandated to investigate instances of gross violations of human rights and crimes against humanity during the armed conflict, to seek the truth about patterns of violations, and to try to create an environment of reconciliation in society. The CIEDP is mandated to investigate the causes and consequences of enforced disappearances during the conflict.

5. UN Economic and Social Council Commission on Human Rights, 61<sup>st</sup> session. *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, 2005 (E/CN.4/2005/102). Official Record. New York, 2005.

6. Although highly authoritative, the UN Impunity Principles do not constitute binding provisions under international law. Regarding the international treaties establishing an enforceable right to truth, Nepal acceded to the Convention on the Prevention and Punishment of the Crime of Genocide (U.N.T.S. 1021, Dec. 9, 1948) in 1969; the International Convention on the Elimination of All Forms of Racial Discrimination (U.N.T.S. 2106, Dec. 21, 1965) in 1971; the International Convention on the Suppression and Punishment of the Crime of Apartheid (U.N.T.S. 14861, Nov. 30, 1973) in 1977; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (U.N.T.S. 1465, Dec.10, 1984) in 1991. Nepal has not signed and ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (U.N.T.S. 24841, Dec.18, 2002), the

The right to truth can be pursued through judicial and nonjudicial processes, which can be used to establish the facts about individual cases, and in particular, to establish the guilt or innocence of suspected perpetrators. Nonjudicial measures, like truth commissions, generally have broader objectives. In addition to detailed fact finding, reconstruction of events, and their circumstances, truth commissions have also been mandated to: produce an explanatory account of what happened during the period under investigation, taking into consideration the historical, institutional, and cultural contexts that led to human rights violations; recognize victims’ dignity and rights; and draw up policy recommendations aimed at improving the situation of victims (including reparations); and/or include societal goals aimed at contributing to post-conflict reconciliation, social justice, or institutional reforms to ensure non-recurrence.

### **Historical Background**

There is a culture of impunity in Nepal that extends back to the pre-1990 feudal era and autocratic rule of elite, high-caste, Hindu men. This history is important as it contours the political and cultural understandings not just of the value and meaning of *truth* and *truth seeking* in relation to the 1996–2006 conflict and peoples’ movements, but also what is possible to attain in Nepal as it relates to truth.

Nepal was an absolute monarchy for over two centuries and a constitutional monarchy for 18 years. According to C.K. Lal, “customs of hierarchal society have seeped into the political culture of Nepal.”<sup>7</sup> There is a history in which the commands of the ruler could override any law, including the constitution. Arbitrary laws were the norm, and the state was structured to rule over its subjects based on a formal and legal hierarchy. As subjects of a feudal state before 1990, the rights and needs of ordinary people were not a government priority.

Nepal has historically been an exclusionary state.<sup>8</sup> The legal and cultural coding framework of the Muluki Ain (General Code or criminal code of the government of Nepal), established in 1854 by the ruling Rana elite, provided the Hindu ideological base for the state. The Muluki Ain divided and ranked the entire population into a caste hierarchy, with Bahun and Chettri castes (otherwise known as Brahman and Ksatriya) at the top, Tibeto-Burman “tribes” (now known more as janajatis or indigenous people) in the middle, and “untouchable” castes (today’s Dalits) at the bottom.<sup>9</sup> State rulers and the various branches of government have been historically dominated by male, high-caste, hill elites. In contrast to caste systems in India, the

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International Convention for the Protection of All Persons from Enforced Disappearance (U.N.T.S. 2716, Dec. 20, 2006), and the Rome Statute of the International Criminal Court (UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90).

7 C.K. Lal, “Tell Truths: Constructing Essentialities from Twisted Realities of Nepal,” unpublished essay (2015).

8 Mahendra Lawoti, *Towards a Democratic Nepal: Inclusive Political Institutions for a Multicultural Society* (London: SAGE Publications, 2005).

9 Andras Hofer, *The Caste Hierarchy and the State in Nepal: A study of the Mulukiain of 1854* (Austria: Universitätsverlag Wagner, 1979).

Muluki Ain placed non-Hindu populations into the middle ranking, above the lower castes.

Nepal has retained a culture of hierarchy and expected deference to state position and power holders in general, built on Hindu norms and traditional values, ascription, rank, and status. The national caste system defined the manner by which heterogeneous groups related to others and the state and reinforced the cultural dominance of Hindu norms. The autocratic Panchayat "democracy," which ruled Nepal in effect from 1960 to 1990, was legitimated through a national culture built on the triad of Hinduism, the Nepali language, and the monarchy.<sup>10</sup> Claims to ethnic identity were interpreted as political subversion,<sup>11</sup> and religion and language together formed a strong basis for discrimination against Nepalis who were low-caste Hindus, non-Hindus, or those whose mother tongue was not Nepali.

Laws upholding traditional practices effectively permitted caste and gender-based discrimination. Given that the Panchayat construction of "the Nepali" centered on the hills, the plains-dwelling Madhesi population faced discrimination as being foreign ("Indian") and "not real Nepalis."<sup>12</sup>

The 1990 Peoples' Movement helped to end royal autocratic rule and ushered in a multi-party democracy. However, the new constitution and political arrangements continued to propagate exclusionary Nepali nationalism, structures, and institutions.<sup>13</sup> Religion and politics continue to be "inseparably enmeshed" as, "despite lip service to secularism, the statecraft in Nepal continues to be guided by beliefs of Hindu religion."<sup>14</sup> The promise of democratic institutions, new forms of political practice, and cultures of citizen-state relations based on accountable governance were almost immediately thwarted by emerging political-party dynamics. More specifically, reflecting the hierarchal nature of Nepali society, political parties have been dominated by older, high-caste men who have encouraged centralized, personalized rule.

Maintaining political cadres and support became vital to emerging forms of democratic competition, necessitating the cultivation of favors from security agencies and sustenance of patronage networks—both *natabad* (favoritism of the family) and *kripabad* (cronyism rewarding the faithful).<sup>15</sup> This resulted in the informal distribution of state resources through political-patronage networks. Even after the war and signing of the CPA, these dynamics have been reinforced by

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10, Richard Burghart, "The Political Culture of Panchayat Democracy" in *Nepal in the Nineties: Versions of the Past, Visions of the Future*, ed. Michael Hutt (New Delhi: Oxford University Press, 1994), 1–13.

11. Joanna Pfaff-Czarnecka et al., *Ethnic Futures: The State and Identity Politics in Asia* (London: SAGE Publications, 1999).

12. Bhaskar Gautam, 'Parithyakta Madhes: Likhatadwarakaida Nepali rastriyatha,' 13 *Studies in Nepali History and Society* pp. 117–146 (2008).

13. Mara Malagodi, *Constitutional Nationalism and Legal Exclusion: Equality, Identity Politics, and Democracy in Nepal (1990-2007)* (Oxford: Oxford University Press, 2013).

14. C.K. Lal, "Tell Truths: Constructing Essentialities from Twisted Realities of Nepal," Unpublished essay (2015).

15 C.K. Lal, "Tell Truths: Constructing Essentialities from Twisted Realities of Nepal," Unpublished essay (2015); Gellner, David and Krishna Hachhethu, *Local Democracy in South Asia: Microprocesses of Democratization in Nepal and its Neighbours* (London: SAGE Publications, 2008).

Nepal’s major political parties.<sup>16</sup> Sources of political power remain personalized, rather than institutionalized, and patrimonial traditions and patron-client relations dominate all political institutions.<sup>17</sup>

In the emerging post-war party networks, protection from the law became part of the currency of patronage.<sup>18</sup> It is thus unsurprising that “successive governments have continued to use laws that allow them to authorize the withdrawal of criminal cases pending in the courts, including for serious crimes like murder.”<sup>19</sup> Based on historical practices, widespread impunity has become the norm.<sup>20</sup>

This means many of those who were directly involved in conflict-related violations have not been held to account, and further, these same actors in several cases actually maintain a high degree of political power. This is evident in the leadership positions currently occupied by those who may have been complicit in, or may be liable for, serious violations. This includes those occupying high-ranking positions within Nepal’s security forces, which, again, have not been vetted.<sup>21</sup> Against this backdrop, it is not difficult to understand why there has been very little support from political or military leadership for transitional justice.

This larger context of patronage and impunity, and the structured inequalities in which they are embedded, are important for understanding the value and meaning of truth and truth seeking in relation to violations committed during Nepal’s 10-year armed conflict and the various peoples’ movements.<sup>22</sup>

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16 International Crisis Group, “Nepal: Peace and Justice” (2010).

17 The absence of elected officials at the local level since 2002 and the consequent introduction of the All-Party Mechanism (power sharing among the main political parties) to ostensibly fill the governance gap at the local level has facilitated the spread of patronage systems, impunity, and corruption.

18. International Crisis Group, “Nepal: Peace and Justice” (2010), 6.

19. Advocacy Forum and Redress, “Held to Account: Making the Law Work to Fight Impunity in Nepal” (2011), 1.

20. As stated by human rights lawyer Mandira Sharma five years after the end of the conflict: “It is a structural issue . . . we have deep problems of inequality in this country. In the context of Nepal there are always people who think they’re above the law. The military and politicians think this. It’s a question of equality, being equal before the law. And the justice system, structured as it is, is not able to respond to the issue of justice for the poor, the powerless.” Peace Brigades International Nepal, “Justice Denied: HRD’s, Impunity, and the Rule of Law in Nepal” (2011).

21. International Center for Transitional Justice, “To Walk Freely with a Wide Heart: A Study of the Needs and Aspirations for Reparative Justice of Victims of Conflict-Related Abuses in Nepal” (2014), 9. See also <http://fohrid.org.np/index.php/press-release-1>; Jitman Basnet, “Immunity and Impunity,” *The Nepali Times*, September 20–26, 2013, <http://nepalitimes.com/regular-columns/GUEST-COLUMN/guest-column-immunity-impunity-bhairavnath-jitman,168>; *Nepal Mountain News*, “Int’l human rights groups ask govt to suspend IGP Rana,” September 18, 2012, <http://www.nepalmountainnews.com/cms/archives/65712>

22, C.K. Lal, “Tell Truths: Constructing Essentialities from Twisted Realities of Nepal,” unpublished essay (2015). In the context of the hegemony of Hindu religion in statecraft and society, political culture—or what C.K. Lal terms as the concept of *sanskara* (individual impressions of the world), is key: “The political power in traditional societies comes neither from the ink in the pen (signifying brain) nor barrel of a gun (modified form of brawn) but from beliefs that have seeped into the mind, body and soul from where it’s extremely difficult to extricate and dislodge. Unlike fate, *sanskara* is amenable to change, but not as definitively as the idea of culture implies.” A mix of fatalism, favoritism (*afnomanche*), and fawn-ism (*chakari*) pervades political life in Nepal. In politics, fatalism manifests itself as adventurism and recklessness, with little or no regard for ethics or values. The patron-client relationship transforms fealty into duty and provides a right to a reward. *Chakari* as obsequiousness becomes an accepted way of cultivating patrons of the *afnomanche* circle. For those outside the system, fatalism results in acceptance of one’s own lot, however unjust.



## Limitations of Previous Commissions of Inquiry

State elites have not seriously attempted to uncover the past in Nepal. The two most important commissions of inquiry since the end of absolute feudal rule in 1990—the Mallik Commission, headed by former Justice Janardan Mallik, and the Rayamajhi Commission, headed by Supreme Court Justice Krishna Jung Rayamajhi—were set up after large democracy movements.

The Mallik Commission was established after the 1990 People's Movement (popularly known as *Jana Andolan I*) to investigate the deadly suppression of protests by the pre-1990 autocratic government. It submitted a 1,100-page final report to the interim government, led by the Nepali Congress, on December 31, 1990, detailing 45 killings and 2,300 casualties. The report found evidence of excessive use of force by state security forces in the suppression of the movement and recommended legal action against those playing the most serious roles in the violence, including Home Minister Kamal Thapa, Law Minister Nirajan Thapa, and Armed Police Force Inspector-General Sahabir Thapa—all of whom again played key roles in the suppression of rights during the 2006 People's Movement.<sup>23</sup>

Despite public pressure to release the full Malik Commission report and although 67 percent of parliamentarians favored taking action against the perpetrators of violations, the government chose not to act.<sup>24</sup> Only one copy of the report was made accessible to Parliament. In the balance between political constraints and norms of justice, the government chose not to risk antagonizing parties connected with past rights abuses. Prioritizing political expediency over accountability, the first democratic government, led by Krishna Prasad Bhattarai, passed a cabinet resolution pardoning the police for excessive violence, dating back even before the Malik Commission submitted its report.<sup>25</sup> Thus, the government missed an opportunity to adhere to the rule of law and signal that all citizens are equal and liable under the law.<sup>26</sup>

The Rayamajhi Commission, formed in May 2006 to investigate deaths and loss of property during the 2006 People's Movement (popularly known as *Jana Andolan II*), made recommendations and named perpetrators. While it was found that 25 people had been killed and more than 5,000 wounded, no one was held responsible. Neither commission underlined the lack of democratic guarantees and injustices of the old regime or stressed accountability and learning from the past as necessary actions to prevent future injustices. Both were criticized as weak alternatives to

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23. International Crisis Group, "Nepal's Maoists: Their Aims, Structure and Strategy" (2006).

24. Bishnu Patak, *Politics of People's War and Human Rights in Nepal* (Kathmandu: BIMIPA Publications, 2005).

25. International Commission of Jurists, "Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity," (2012), 32.

26. According to human rights lawyer Jitman Basnet, "The withdrawal of criminal charges against those accused of suppressing the 1990 People's Movement set a precedent. The politicisation of crime and withdrawal of criminal cases over the years ensured immunity from prosecution." Jitman Basnet, "Immunity and Impunity," *The Nepali Times*, September 20–26, 2013, <http://nepalitimes.com/regular-columns/GUEST-COLUMN/guest-column-immunity-impunity-bhairavnath-jitman,168>

criminal proceedings. Some charged that they had been utilized by the government as a means to maintain the status quo or a means to deflect public anger and attention,<sup>27</sup> with little interest in redressing the wrongs of previous regimes or preventing violations and injustice from recurring.<sup>28</sup> One man interviewed by ICTJ recounted a private meeting in the Prime Minister’s office about a human rights case. The minister had said to him, “You know, we know this is what happens the world over; in such cases a commission is formed, nine months’ pass with this and that, and it goes.” The interviewee stressed that this was not his personal view, but “the psychology with which the state is run.”

Further, both the Mallik and Rayamajhi commissions covered very short time periods and focused on suppressions of democracy movements. Neither were linked to a broader strategy of promoting accountability and justice. Importantly, both were governed by the Commission of Inquiry Act (1969), which was established during the autocratic period of the monarchy, and the Commissions of Inquiry (Terms and Conditions of Service of Commission Members) Regulations (1994). Neither gave importance to the public knowing the truth, as evidenced by the fact that their reports were never made officially available to citizens.

It is in this context that the long-awaited TRC and CIEDP were formed in February 2015, eight years after the signing of the CPA. Both have been criticized by national and international human rights organizations for their weaknesses, particularly the TRC, which, according to the establishing law, can recommend amnesties for gross violations of international human rights law or serious violations of international humanitarian law—in contravention to international legal norms—and for its lack of adherence to international standards of independence and impartiality.<sup>29</sup>

However, despite the criticisms, interviewees shared expressions of hope for the commissions’ role in providing justice. In Rukum District, for example, interviewees hoped a TRC would help people to find out the truth about who was killed: “Why were they killed, how were they killed, where were they killed, what was the reason why they were killed? If those things aren’t found out for sure, and if we’re just told on the basis of what was seen and heard or on the basis of revenge, there will be problems tomorrow. So, the truth-finding commission needs to be established.” Others hoped national-level processes would help bypass much of the politicization and distortion occurring at local levels, which have prevented many from seeking the truth and receiving any form of justice.

For the two truth commissions to be successful in providing meaningful and legitimate truth for victims, it is important to first understand what truth and truth seeking means for Nepalis.

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27 For a more extensive critical assessment of the commissions, see International Commission of Jurists, “Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity” (2012).

28 International Commission of Jurists, “Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity,” (2012), 7.

29 UN Office of the High Commissioner for Human Rights, “OHCHR Technical Note: The Nepal Act on the Commission of Investigation of Disappeared Persons, Truth and Reconciliation 2071” (2014); Informal Sector Service Centre, “INSEC Annual Report 2014” (2014).

## Truth Seeking and Its Meanings, in Interviews

Truth seeking is an important element of the pursuit of justice, as is uncovering the truth about the past when grappling with legacies of human rights abuses. To date, comparatively little attention has been paid to truth seeking in Nepal, although national and international human rights organizations during and after the conflict have published many qualitative and quantitative reports on violations committed during the conflict and the rights and needs of conflict-related victims.<sup>30</sup> In the rush to establish peace and set up a new political regime with the writing of the constitution, conflict victims and their suffering have been sidelined.

Since the signing of the CPA in 2006, debates in the mainstream media have focused on the importance of truth-seeking commissions and other mechanisms to identify and give justice to conflict victims.<sup>31</sup> However, it is mainly victims' groups, human rights lawyers, and national and international NGOs that have consistently advocated for truth commissions. In addition, these stakeholders often have focused on the potential contribution of truth commissions to criminal accountability, not on truth for its own sake or other nonjudicial objectives.

As a whole, the need to understand the truth about the past has been almost left out of public discourse, with little attention paid to understanding past human rights violations as a means to seek more comprehensive justice in the building of the "New Nepal." Understanding the value and meaning of *truth* and *truth seeking* in relation to the armed conflict and the 1990 and 2006 people's movements provides greater insight into attitudes towards truth seeking that could bolster broader initiatives on the right to truth and increase the relevance of truth-seeking processes for populations directly affected by the conflict and human rights abuses.

Interviews conducted for this report start to give shape to this understanding. Many of the interviewees who suffered during the conflict revealed a clear desire to learn more about what happened, why it happened, and who is responsible. The wider

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30 For example, the Informal Sector Service Center Nepal has been publishing an annual Nepal Human Rights Yearbook since 1992 and other publications related to human rights, including a three-part series titled "UniharuKahaChaan [Where Are They?]" on the forcibly disappeared; one of which was translated into English (INSEC 2010). Similarly, Advocacy Forum has published many reports on the rights of conflict victims, including one on transitional justice and women (Advocacy Forum 2010) as well as co-published reports with Human Rights Watch (2008) and ICTJ (2008) among others. WOREC also publishes an annual yearbook on violence against women and other documents on human rights and the transition. Similarly, UNIFEM and SAATHI undertook research on sexual violence during the conflict and the transition period (2008). Of key importance has been the 2012 OHCHR publication *The Nepal Conflict Report* and its accompanying *A Transitional Justice Reference Archive*, which documents and analyzes the major categories of conflict-related violations of international human rights and humanitarian law that took place in Nepal from February 1996 to November 21, 2006. It is intended to contribute to the task of ensuring justice for serious violations committed during the conflict.

31 Punyaprasad Khatiwada, "Bepatha chanbin ayog ra yesko awasyaktha [Disappearance-Finding Commission and its Necessity] *Annapurna Post*, October 11, 2006, 8; Purushottam Dahal, "Thatya Ayog Jhan Awasyak [Truth Commission More Important]," *Nepal Samacharpatra*, September 16, 2006; Kanak Mani Dixit, "Himal Sakchi Cha [The Himalayas are Witness]," *Nagarik*, January 22, 2010, 6-7; Ram Kumar Bhandari, "Forgotten Futures," *Nepali Times*, August 26 - September 1, 2011.

need for knowledge beyond the specifics of victims’ suffering was made particularly clear by a man in Accham who lost two sons and a daughter in a socket-bomb explosion near a water tap close to their house. For him, the need for truth extended beyond finding out who had placed the bomb that killed his children. The need for truth included knowing “how many in the district were beaten, how many killed, how many were stolen from, how many were displaced.” An ability to situate his own loss in the larger conflict was of value to him. Making the statistics of the conflict widely available in simple, accessible local languages would be a positive intervention, given this demand for wider contextual knowledge.

In other cases, however, the value of truth is conceived of differently. For some, it is understood as part of the political compromise seen as necessary

for the peace process. A leading academic affirms this sentiment. His reading of the CPA was that society was meant to “forgive and forget,” to do otherwise would be to imperil the peace process given the involvement of top leaders and army police—as he put it, “everybody.” “To be brutal,” he said, “emotional and sentimental [losses] cannot be repaired. You can give reparations only for material losses.” A related sentiment was expressed by others who felt the issue of truth seeking must be understood within the current political context, as subject to political negotiation. A senior leader of a political party focused on the commissions as posing a problem not only for the Maoists, but for the army and police as well. Given the political nature of the issues, he said, “It will be necessary to have discussions.”

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**“To see the dignity of both the missing and their families affirmed, through the sanctioning of families’ narratives, officially and by the community.”**

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Other interviewees highlighted the subjectivity of the process. According to one senior interviewee, “Truth is the act. But why did that act happen? That is when the truth gets bent.” Still, many victims stressed the importance, generally, of a truth-seeking process, despite its potential flaws. One prominent women’s rights activist reported that even though the TRC and CIEDP are weak and the process is slow, the need for truth and justice cannot be totally abandoned.

Earlier studies of victims and conflict-affected persons by ICTJ highlighted the importance of truth in helping to meet their short and medium-term needs.<sup>32</sup> Detailed work by others on truth telling for families of the missing in Bardiya, for example, revealed two goals: to confirm the fate of loved ones with the location and identification of bodies and “to see the dignity of both the missing and their families affirmed, through the sanctioning of families’ narratives, officially and by the community.”<sup>33</sup>

In fact, for families of the missing in various parts of the country who were interviewed for this report, the value and meaning of truth telling centered on confirming the fate

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32 ICTJ, “To Walk Freely with a Wide Heart” (2014).

33 Simon Robins, “Constructing Meaning from Disappearance: Local Memorialisation of the Missing in Nepal,” *International Journal of Conflict and Violence* 8 (2014): 5.

of missing loved ones and the location and identification of their bodies. The widely used phrase by families of the forcibly disappeared was the demand for *ki las kisas* (literally "either body or breath"), meaning either a dead body or a living breathing person. In the words of the woman whose husband had been disappeared in Daliekh, "If they were killed, we should be told where and how they were killed. If they're alive, we should be told where they are. This is our biggest need."

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**"If they were killed, we should be told where and how they were killed. If they're alive, we should be told where they are. This is our biggest need."**

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The value of this truth is revealed by the extent to which families have tried to uncover information about their missing loved ones on their own and their continuing stress on the need for information. In Jhapa, a man whose son had been disappeared knew the date of his son's arrest by the army, the names of five other people who were arrested with his son, and the last date on which his son and the group were definitely present in the army barracks. He also knew of an incident in which six people in the barracks were killed, after which all traces of his son were gone. He therefore assumes, but does not know, that his son was one of those killed in this rumored incident.

In terms of the continuing search for truth and full accountability, a woman from Jhapa whose husband had been forcibly disappeared emphasized that simply making public the names of those who were killed was insufficient: "For us this is not enough. It must be proved that someone killed them . . . The killer must also tell where he buried them. For sure the army keeps some kind of recognizable personal things. They must keep their clothes or photo. I will not accept being simply told, 'Your husband was killed.'"

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**"The Maoists must give *ki las kisas*. I will not take as truth what I have heard."**

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The lack of a body was key in many narratives. Again, the woman whose husband had been disappeared in Dailekh noted, "We also feel that my husband survived and will come home . . . we haven't seen [his body] with our eyes . . . even though it's now been over 13 years, I feel maybe he will come home." A man whose son was disappeared in Kapilvastu and whose death had been verified by a human rights organization through the army stated, "The state didn't even give us his body. After killing him, the army threw him somewhere." A woman in Dailekh whose husband had been disappeared by the Maoists said, "The Maoists must give *ki las kisas*. I will not take as truth what I have heard."

The need for truth about those who were killed for interviewees also related to making public the specifics of the deaths: who killed them, why, how, and where. Here, the right to know the truth about the specific circumstances in which victims died was stressed. In Surkhet, a woman displaced from Dailekh described how the bodies of her husband, her brother, and another man from the village had been left

at her house by the Maoists. For her, the value of truth centered on knowing the perpetrators and the circumstances of the men's murders: "Who killed them, how, and where must be made public . . . Both the army and the Maoists must tell."

Similar sentiments were expressed by the man, mentioned above, who lost three children in a bombing. The truth about who left the bomb and why innocent people were targeted was a central demand. He reported that he had heard the state had declared one of his children to be a martyr but was unsure of which one—an indication of the disconnect between the state and victims' rights, needs, and expectations. "The truth is my three children died. To publicly reveal how they died is the truth . . . If truth comes out, we will get justice."

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**"Can people who were subjected to mental torture and physical torture forget their suffering in their lives?"**

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As documented in a previous ICTJ report,<sup>34</sup> for torture victims there can be no real compensation for the torture, humiliation, and life-long health and psychological problems that affect their everyday lives. A torture victim in Kapilvastu, who was tortured by both the state and the Maoists, stated, "Can people who were subjected to mental torture and physical torture forget their suffering in their lives?" Torture victims underlined the fact that while those who carried out torture and killings were given state compensation (in the form of professional promotion),<sup>35</sup> little was given to the victims. In the words of a Dailekh torture victim, "The state has done nothing." Still, for many of these victims, the value of public recognition of their status as torture victims, and what they had suffered during the conflict, was important, particularly as it is linked to their ability to possibly access reparative justice.

### **Truth for Victims of Sexual Violence**

In cases of sexual violence, truth telling is complicated because victims are often still grappling with the unaddressed consequences of violations committed against them while navigating a society quick to stigmatize them. Survivors of rape and torture are particularly disadvantaged due to the stigma of rape in Nepal, which prevents them from reporting crimes, adding to their physical and mental suffering.<sup>36</sup> Victims of sexual violence include both men and women, and each face distinct social stigma and other obstacles that may prevent them from discussing or reporting the violation. Despite the lack of official reporting, interviewees reported that rapes had been widespread during the conflict, with the highest incidences in

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34 ICTJ, "To Walk Freely with a Wide Heart" (2014).

35 Many security officials alleged to be involved in human rights violations during the conflict have been promoted. One of the alleged perpetrators in the Dhanusha-5 case was later promoted to the Head of Nepal Police. A high-ranking official from the Bhairabthan Battalion, which was allegedly responsible for the enforced disappearance of 49 persons, was later promoted to the higher post of Brigadier General. See <http://fohrid.org.np/index.php/press-release-1>; *Nepal Mountain News*, "Int'l human rights groups ask govt to suspend IGP Rana," September 18, 2012, [www.nepalmountainnews.com/cms/2012/09/18/intl-human-rights-groups-ask-govt-to-suspend-igp-rana/](http://www.nepalmountainnews.com/cms/2012/09/18/intl-human-rights-groups-ask-govt-to-suspend-igp-rana/)

36 ICTJ, "To Walk Freely with a Wide Heart" (2014), 20-21, 23-25, 47-48.

Achham, Kapilvastu, and Rukum. In Rukum, the number of rape cases was said to be "high," and victims there continue to suffer poor physical and mental health. The lack of reported cases of sexual violence was cited by a bar association member in Achham as due in part to a continuing lack of security guarantees for women and the absence of information on what rape victims might get from the government.

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**"When the army keeps you for 83 days, do they release you without biting? They are the dogs of those days."**

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Reiterating these findings, one interview demonstrated the oblique way in which sexual violence is often discussed. A woman whose husband had been forcibly disappeared in Dailekh talked about him and related monetary compensation and legal remedies, only briefly touching on the fact that she had been jailed and tortured by the army. While she did not directly say she had suffered sexual violence, it was clear that is what she was referring to when she said: "When the army keeps you for 83 days, do they release you without biting? They are the dogs of those days." Yet, she made no claims as a victim of sexual violence or torture.

In Kapilvastu, not one sexual violence case had been registered with the local peace committee prior to the establishment of the TRC. Interviewed peace committee members stated that it was unlikely that many would be reported given the notorious lack of convictions in such cases: "Why would a conflict rape victim come forward?" This could help give some context to arguments that the marginalized do not prioritize judicial processes given the traditional use of the legal system as a means of persecution of minorities and members of marginalized groups.<sup>37</sup> In fact, the lack of prior convictions likely reveals the futility of filing cases for those who would risk much in coming forward, particularly due to widespread stigma in Nepalese society.

This pattern appears to be repeating itself in regards to formal, nonjudicial processes. Unofficial reports from the TRC suggest that only approximately 300 complaints of sexual violence have been submitted, out of a total of approximately 58,000 complaints of conflict-era human rights violations. Victims' groups have reported that many victims of sexual violence want to file complaints but face a number of obstacles stemming from the hesitancy to reveal the violation to their communities, local authorities, security forces, and at times, their own families.

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**"Truth is in hiding . . . Who is looking for the truth?"**

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Attitudes towards the truth about people who suffered sexual violence was exemplified in a group discussion at the Kapilvastu local peace committee: "[For people who were raped] truth is

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37 Simon Robins, "Transitional Justice as an Elite Discourse: Human Rights Practice Where the Global Meets the Local in Post-conflict Nepal," *Critical Asian Studies* 44 (2012): 3–30.

in hiding ... Who is looking for the truth?” Victims’ need for the truth about the sexual violence they experienced seems to be made more complicated by the stigma and shame that the social recognition of their suffering would bring. The need to remove these social and cultural stigmas in Nepal remains a challenge to truth seeking for victims of sexual violence during the conflict. For these victims, more careful and concerted effort may be needed to understand how truth can be used to eliminate this stigma and the dangerous misconceptions that exist around sexual violence.

### **Why Truth: Understanding the Importance of Truth in Nepal**

It is insufficient to simply understand what truth means for victims. Its underlying value and what victims hope will be achieved through truth-seeking initiatives also need to be understood. From interviews, it is clear that the reasons and value behind truth seeking are many. Many victims emphasized the need for closure and an end to the ambiguous loss they have been experiencing for years. Others simply want acknowledgement of their or their loved ones’ suffering. Still others see truth seeking as a first step toward other forms of justice, such as reparations or criminal prosecutions. These findings help inform recommendations for improving the truth-seeking process in Nepal.

#### *Victims’ Need for Closure*

Families of the missing and forcibly disappeared in particular emphasized the need to see the body of their missing relative or have the body signifies the cultural importance of proof of body, which is necessary for holding appropriate death rituals across the varied cultures in Nepal. The cultural value given to recovering the body was evident even in Rukum, where the Maoists’ stress on martyrdom has left little room for villagers to entertain ideas that loved ones who were forcibly disappeared might return. Prior research on Maoist families of the forcibly disappeared revealed the ongoing uncertainty and pain of the wives of the disappeared.<sup>38</sup> However, in Rukum male and female interviewees appeared stoic. Many, if not most, of those interviewed who had lost family members during the conflict stated that they had never seen the bodies of their loved ones and were informed by the Maoist party later of their death. Further, the fact that many victims had worked or fought in the conflict in different regions of the country made the return of their bodies to their families out of the question. There was a sense of resignation among family members, that, given the war, recovering bodies at that time was impossible.

Yet, seeing the body, or even having knowledge of the location of the death, was valued as a way to learn more about what had happened to their loved one. For example, one man who had been sent to India for “party work” was told over the phone by a Maoist leader, three months after the fact, that his daughter had been “martyred.” He stated, “After finding out, there was no question of finding her body

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38 Ruth Marsden, “The Politics of Loss in the People’s War and Its Aftermath: The Disappeared as Kind, Citizens and Warriors,” *Studies in Nepali History and Society* 16 (2011).



... I was in an emergency situation myself. So I didn't go. [She] probably became a martyr. I felt that going and searching, I wouldn't find her body. And the possibility of going to search and ask wasn't there. I haven't gone even once to the place where [my was daughter] was martyred. I do have plans to go there."

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**"Our people will come home today or tomorrow. We watch the roads."**

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Victims' lingering hope that their loved one was still alive was constantly expressed, demonstrating their state of ambiguous loss. This is due to the lack of clarity over the fate of their loved ones; their death is almost impossible to accept, leading to a disruption of the normal grieving process, "complicated grief," or "ambiguous loss."<sup>39</sup> A woman interviewee from Bardiya said, "Our people will come home today or tomorrow. We watch the roads."

In these cases, truth seeking could pave the way for relatives to finally obtain closure and complete their disrupted grieving process. This was reiterated in Jhapa, where victims expressed that they cared more about knowing the truth about the status of their loved ones than about the CIEDP itself. "What [victims' families] want right away is the truth. They are not concerned with the commission. The government must tell us whether our son is alive or not, that way we can do funeral rites and our minds will be at peace."

#### *Acknowledgement of Victims' Experiences*

Interviewees constantly reiterated that the state was responsible for notifying the public about the status of missing loved ones. In the words of a man from Jhapa whose son had been forcibly disappeared, "For the truth to be known, the state must bring out the truth, not in bits and pieces, but in a clear way." State acknowledgement of the harms experienced by victims seems to carry inherent value on its own, as does providing necessary recognition to further other ends, such as reparations and prosecutions.

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**"For the truth to be known, the state must bring out the truth, not in bits and pieces, but in a clear way."**

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#### *Victims' Continuing Need for Redress*

One possible outcome of truth seeking for victims seemed to be an increased chance of obtaining different forms of relief and redress, including economic support, education, and health care. Victims and those who suffered in the conflict who were interviewed for this study reiterated their concerns regarding the interim relief provided by the state and their general dissatisfaction with it. They stressed the need for full-time employment for their spouses and children, education for their children, and health support, especially for torture victims. They also emphasized

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39 Simon Robins, "Towards Victim Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal," *International Journal of Transitional Justice* 5 (2011): 75–98.

that the truth should be uncovered about the harm that victims suffered through the conflict and perpetrators should be punished.<sup>40</sup>

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**“We cannot forget, as long as we don’t find out who killed them, who is guilty, or until we find out the truth.”**

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Opinions varied on the sufficiency of the relief provided by the state, with some victims expressing that money cannot compensate for the loss of a loved one. In the words of a Dailekh man who lost his son, “How can money be compared to life?” Victims in many places were suspicious of receiving relief funds from the government and the motives of the state. In Bardiya this was expressed in a focus group: “By giving us 2–4 lakhs for various reasons the state is trying to make us forget our suffering. We cannot forget, as long as we don’t find out who killed them, who is guilty, or until we find out the truth.”

The need for long-term economic support was often phrased in terms of wanting a *jagir*, a much-sought-after form of state employment that guarantees employment for life and a pension. A woman whose husband had been forcibly disappeared in Bardiyasaid said, “Like the Nepali government bureaucrats, we need monthly allowances.” The man in Accham who lost three children stated that a one-time relief payment was insufficient: “It is not an issue of putting a 20–40,000 rupee ointment on the suffering. It is a livelihood issue.” Further, most interviewees called for education for *all* children of conflict victims—not just the three children per victim stipulated by the government’s Interim Relief Program.<sup>41</sup>

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**“It is not an issue of putting a 20–40,000 rupee ointment on the suffering. It is a livelihood issue.”**

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### *Victims’ Desire for Prosecutions*

The value of making the truth public was also seen as an important component of judicial accountability. This was true for a woman whose husband had been beaten to death in Kapilvastu by a group of men in their village on suspicion of being a Maoist. She and others in the village knew who the perpetrators, who roamed free in the village, were, so she decided to pursue prosecution as a way to inform the larger society of their actions. In an interview, she stated that “the truth must come out.” She secretly filed a case against the men but made it clear that she did not need any money from the state, even though she had five young daughters who

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40 ICTJ, “Navigating Amnesty and Reconciliation in Nepal’s Truth and Reconciliation Commission Bill” (2011); ICTJ, “To Walk Freely with a Wide Heart” (2014).

41 In 2008 the government of Nepal introduced the Interim Relief Program (IRP) which aimed at providing provide interim humanitarian assistance to the victims and their families. IRP was designed to help some, but not all, categories of victims of the armed conflict. IRP has given cash grants to families of the deceased or disappeared and to some of those disabled during the conflict. It has also offered scholarship money for up to three children of the deceased, disappeared, or disabled and vocational training for a limited number of victims. People with the most serious physical disabilities have received certain health care benefits. The government originally promised assistance to internally displaced persons and to those who lost property during the conflict as well; however, these groups have received minimal support.

needed to marry. Instead, she prioritized criminal justice, insisting that "they [the perpetrators] must be prosecuted. Whoever killed them, they are guilty." Seeking to make public the truth of her husband's killing was inextricably linked to her right to have the perpetrators prosecuted.

Even in remote villages, interviewees were aware of national and international justice processes taking place, and tied these to their demands for criminal accountability. The public keenly followed the arrest and trial of Colonel Kumar Lama in the United Kingdom in 2013 on charges of torturing two suspected Maoists, particularly in Kapilvastu given that he had been in charge of army barracks there at the height of the conflict. A man who lost two sons (one killed by the Maoists and one by the state) reported that he told Maoist leader Baburam Bhattarai while he was visiting his house in Kapilvastu that Lama should be prosecuted for the abuses he committed, saying "He is to blame. He is a criminal." This was a widely shared view among conflict victims in Kapilvastu.

Interest in the Lama case among interviewees contrasts with earlier research by Simon Robins,<sup>42</sup> which emphasized that victims did not prioritize judicial processes and the "lack of resonance of international post-conflict discourses—traditionally dominated by legal approaches—with victims' agendas." Victims and their families in Kapilvastu saw hope for justice and public disclosure of the truth in the international trial of Lama, whom they believed was responsible for the killing, torture, and enforced disappearance of their loved ones. It was believed that his trial, in turn, would help give legitimacy to truth-seeking initiatives in Nepal. This finding gives support to the strategy of pursuing emblematic cases as part of an effort to seek more comprehensive justice, an approach predominantly followed by national and international human rights organizations in Nepal.

### **Defining and Identifying Victims**

The concept of *victimhood* in Nepal is highly political, and the political aspects of the label of "victim" came out in interviews. Interviewees expressed a desire to emphasize certain aspects of their own lives or their loved ones' lives that they felt made them more entitled than others to the label of victim. This is a reflection of a national political dynamic wherein leaders try to gain benefits for victims in "their" constituency and in which people victimized by different sides of the conflict have had trouble finding common ground.

Despite successes in recent years in building a victims' movement with participation from those victimized by all sides, tensions remain. Complicating this narrative is the phenomenon of "fake victims," or people with political connections who have been able to claim benefits for which they do not qualify, and by the payment of benefits to ex-combatants, instead of to victims who did not participate in the conflict.

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42 Simon Robins, "Transitional Justice as an Elite Discourse: Human Rights Practice Where the Global Meets the Local in Post-conflict Nepal," *Critical Asian Studies* 44 (2012): 3–30.

### *Affirming Victims’ Identities*

In addition to finding out the fate of their loved ones through truth seeking, many interviewees expressed a desire for the state and/or their communities to recognize certain aspects of their loved ones’ identities, including their role, or lack thereof, in the conflict. Such roles fall into two main categories: “martyrs,” those killed while participating in the conflict to some degree, and “innocent victims,” ordinary people who were unjustly targeted by the Maoists and/or the state.

The idea of innocence and neutrality recurred in many victims’ responses, and interviewees also clearly valued truth telling about villagers who did not take part in the conflict but who were nonetheless targeted and suffered as a result of the conflict. In Surkhet, a former member of the PLA and current member of the Unified Communist Party of Nepal-Maoist (UCPN-Maoist) also stressed the importance of distinguishing between the innocent and those perceived as in some way guilty: “Why was an innocent person killed, for what reasons were they killed? If they were innocent, proof must be collected.”

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**“The truth is neutral. The innocent must be declared innocent.”**

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Many victims in Achham and Dailekh, two areas that were historically marginalized by the state

and national and international development actors, had similar perspectives. There, interviewees felt they had unjustly suffered greatly at the hands of both the state and the Maoists; they wanted to emphasize that their loved ones had not been involved in the conflict. The family of one of the victims of the Dailkeh Dhungal Village Development Committee killings, in which seven villagers were killed when police opened fire on committee members,<sup>43</sup> stated, “The truth is neutral. The innocent must be declared innocent.” Similarly, in answer to the question of what truth meant, a woman in Dailekh whose two brothers were killed by the Maoists stated, “What is truth, that is the most painful thing,” after which she proceeded to rhetorically ask if her family had cheated anyone, taken the property of others, or had been a state employee or in the Indian army—in other words, they were innocent of any action that would have justified their being targeted.

The priority placed on revealing victims’ roles in the conflict or lack thereof intersected with the issue of victims being targeted, jailed, tortured, and/or killed for reasons unrelated to the conflict, such as revenge or personal gain. It was also linked to the general desire to determine and expose the motivations and larger context behind the violation. Previous research in Bardiya pointed to these dynamics.<sup>44</sup> For instance, in Bardiya, families of conflict victims interviewed for this research noted that the conflict had been used to maintain feudal relations of dominance over marginalized groups.

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43 UN Office of the High Commissioner for Human Rights, “Nepal Conflict Report: An Analysis of Conflict-related Violations of International Human Rights Law and International Humanitarian Law Between February 1996 and 21 November 2006” (2012).

44 UN Office of the High Commissioner for Human Rights, “Conflict Related Disappearances in Bardiya District” (2008).

Some interviewees also expressed a desire to not only recognize the violation victims suffered, but also victims' active contribution to the country. In Rukum, for example, a man whose son had been disappeared expressed a need for recognition of his son's contribution to "society, nation, nationalism." Thus, interviewees pointed to a desire for recognition and confirmation of their experiences outside the narrow lens of the violation suffered and its impact, seeking a more nuanced and humanized narrative of the victim's life.

From a human rights standpoint, however, the tendency to establish a hierarchy among victims or to use the label of "innocent victim" is problematic, because it implies that some victims are less deserving of redress than others or that some are more "guilty" in some respect. However, under national and international law victimhood is not contingent on one's guilt or innocence, nor one's affiliation with an armed insurgent group. Violations such as torture, killing, and enforced disappearance remain gross violations of victims' human rights, regardless of the victim's supposed guilt or affiliation, and as such, all victims of these crimes are entitled to the same remedies. Unfortunately, the tendency to ascribe victimhood only to those who are perceived as "innocent" is not unique to Nepal. It is common in transitional contexts, particularly, though not limited to, contexts where specific ideology fuels armed insurgency or conflict.

Complicating the issue slightly is the belief among many in Nepal that members of non-state armed groups who fought the state cannot be recognized as victims entitled to specific rights.<sup>45</sup> Many Nepali victims affiliated with the armed forces of the CPN(M) have not come forward to submit complaints to the TRC or CIEDP, for example, because they do not recognize themselves as eligible. Instead, there is a tendency to consider violations committed against them as being part of the price of fighting for the Maoist ideals on which the group was founded.

However, these ideas regarding victimhood and innocence should be dispelled through concerted outreach and raising awareness, in order to ensure that all victims have full access to the truth, justice, and remedy owed to them. At the same time, victims should be free to decide whether to define themselves as a "victim" and to prioritize whichever aspect of their multilayered identity they choose. Victims and their families should be allowed to express their broader narratives in the context of a process that recognizes that victims have identities beyond the violation they suffered and that all victims have the right to redress, regardless of their roles in the conflict or complicated identities.

### *Who Are the "Real" Victims?*

Another dimension of truth valued by victims and their families at the local level at this particular moment in Nepal's transition was identifying "real" victims, as opposed to those who have falsely claimed benefits meant for victims. The context

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45 This has also been the case in other contexts where ICTJ has worked. In Tunisia, for example, many victims of the revolution were initially reluctant or refused to submit files to the country's Truth and Dignity Commission, believing that the violations they experienced, such as torture and political imprisonment, were part of their struggle for a cause they perceived as just.

of this emphasis is one in which conflict victims have not received the relief intended for them; instead, relevant funds were allegedly redirected to persons with special connections to certain political parties, many of whom allegedly did not suffer the violation for which they received relief. The need for the truth about “real” victims is important to victims for practical reasons, given the access that the designation of “victim” gives to state-mandated relief programs. This issue, which has been raised at the national level by victims’ groups, was stressed in an interview with a victims’ group leader in Kathmandu.

At the local level, the understanding of what it means to be a victim and a citizen for interviewees was inextricably linked to the politics of patronage, elites, and corruption in which they were situated. In Dailekh, a woman whose husband had been disappeared stressed that people who had suffered harm unlinked to human rights violations (for instance, those who “fell off trees and cliffs”) were claiming relief, backed up by political powers, while those who had suffered conflict-related violations were unable to get any relief from the state. She stressed, “There needs to be real victims. The victims need justice.” Interviewees spoke of their struggle for financial survival after losing primary-income earners during the conflict, in the context of elite power structures and patronage systems seeking to establish their own beneficiaries to take advantage of relief programs. In that context, the need to establish the truth about “real” and “fake” victims was of central importance. Thus, a male torture victim in Dailekh stated, “Relief must be given after differentiating between [real and fake] victims. . . I think in this way truth should be separated [and made clear].”

### *Different Needs for Different Victims*

One context in which recognizing distinctions among victims can be helpful is in understanding the different needs and priorities of victims. Certainly even among victims of the same violation, needs and justice priorities will never be identical; yet, some similarities are likely to be found, for example, among victims of enforced disappearance.

A nuanced understanding of different categories of victims may also be helpful when making decisions about which victims to prioritize for certain measures, particularly regarding forms of reparation. Often, victims of torture and sexual violence have pressing health-care needs, as in many cases unaddressed physical and emotional wounds will likely have worsened over time. Some victims may have greater financial needs than others or face particular challenges in accessing measures of redress or justice. Thus, truth seeking should help to form and advance the understanding of these differences among victim groups, which in turn can improve the efficacy and legitimacy of any future forms of justice.

## Challenges to Effective Truth Seeking

There is a clear awareness of the political environment in which victims’ needs and rights are embedded, which constrains the possibility of “truth” becoming public and of truth-seeking activities bearing fruit for victims. In Dailekh, a woman said that her daughter-in-law was unable to access relief from the state even though her husband had been killed by the Maoists, because “[state officials] give to their own people” and neither woman knew anyone in a position of power to ask for assistance. Similarly, in the words of a male relative of a conflict victim in Achham, “Some things have not come out in the open” because only “those who are at the front” and “those who can read and write, or have people in place [‘connections’]” have their issues heard. He stated that if he had connections he might have received relief. A woman in Dailekh whose husband had been disappeared and who was herself a torture survivor named her perpetrator, who was a member of the army, but believed he would not be prosecuted “because he has power.”

Victims clearly acknowledged that they needed power in order to seek the truth and make claims about their status as victims. A man whose son was disappeared in Kapilvastu saw a minimal chance of receiving justice because, according to him, the political leadership was limited to elites. In Achham it was said that those who were a “little clever” had their voices heard, while simpler folk went unheard and “no one has looked after them, not the Maoists or the state.” In Rukum, the fact that victims sent files to the Ministry of Peace and Reconstruction without any results was considered proof that the TRC was similarly intended merely to keep victims occupied (or to use the colloquial term, “chewing”). They doubted the extent to which the TRC would fulfil victims’ right to know the truth.

Another interviewee pointed to political dynamics as a way to explain why prominent academics, intellectuals, and some segments of civil society (excluding human rights groups) chose not to raise the issue of the human rights of conflict victims. He reported that, given the highly politicized environment in Nepal, to ask for the truth is immediately to confront resistance on all sides, as no side wants the truth revealed. Pointing to the political pressure on the judicial system, and the level of threats, late-night phone calls, and warnings currently facing those working in it, the interviewee asked, “Who will take the risk?”

Further, the same interviewee identified divisions within Nepalese civil society (including human rights organizations and media, many of which are close to political parties and unwilling to antagonize them) as other reasons for the lack of demands for human rights in the country. The leader of a national conflict victims’ alliance underlined the political alignment of certain civil society organizations, including human rights organizations as an obstacle to the right to truth .

Some civil society actors, however, clearly understood and pointed prominently to the problem of political patronage, echoing the concerns of victims. A bar association member in Accham reiterated that those with some “political power”

are better able to access relief and highlighted the role that political party patronage systems play in allowing the machinations of those who want their political cadres to benefit (or as he put it, “to get fat”). Further, a journalist in Rukum stressed the lack of prosecutions of conflict-related violations in the district as adding to victims’ suffering.

Further, the meaning of truth and the value of seeking the truth was clearly situated in the potential dangers posed by existing political power structures at the local and national levels. For many, the value of truth was outweighed by security concerns. This was evident in the disclosure by a torture victim in Kapilvastu who did not feel safe in reporting to higher authorities that individuals were falsely benefiting from reparations programs (although there were only three conflict victims in his VDC, six people were receiving relief from the district administration). He said, “Now, if I put in a complaint to the district administration with their names on it, won’t I be attacked? You tell me.” Similarly, getting together with the community to discuss the effects of the conflict was seen as highly risky given the likelihood of informants telling powerful elites.

### **Lack of Awareness at the National Level of Victims’ Needs and Experiences**

A lack of awareness at the national level of the nuances and realities of conflict victims’ experiences was a prominent theme across interviews. For example, a torture victim in Kapilvastu stressed that the Nepali government’s failure to accept Indian medical bills for reimbursement amounted to a form of injustice, given that during the conflict the quickest, cheapest, and often only medical care available was across the border in India, along with relied-on kinship structures. According to human rights workers and members of the Kapilvastu local peace committee, this was a widespread problem in the Madhes, a region of Nepal in the outer foothills of the Himalayas, where locals retain cultural and demographic connections to parts of India. The policy poses a massive problem for victims of torture and other egregious crimes living in Kapilvastu and in the Madhes as a whole, many of whom were low income. In particular, it bars some victims of torture in the region from being recognized as eligible for relief and reparations.

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“If I put in a complaint to the district administration with their names on it, won’t I be attacked?”

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There was a consensus among interviewees in Kathmandu that the TRC was envisioned by political actors as primarily an instrument of reconciliation. While many expressed the need for victims to receive justice and for the guilty to be prosecuted in one form or another, this research showed that there was an inadequate acknowledgement of the personal, cultural, and psychological experiences of victims. Further, none of the interviewees in Kathmandu explicitly mentioned the need to hold the state responsible for crimes and violations committed by its agents, nor did they affirm that knowing the truth about past violations would help



to prevent them from happening again.<sup>46</sup>

### **Lack of Political Will to Pursue Truth Locally**

Perhaps unsurprisingly, political leaders and civil society members at the local level appeared to be much more aware than those at the national level of the needs and expectations of the local population. Local politicians expressed in clear terms the priorities of conflict victims and their families, as well as their immediate and long-term needs, stressing the educational needs of children, employment guarantees, and the health concerns of survivors. Indeed, a political leader from the Communist Party of Nepal (Unified Marxist–Leninist) (CPN-UML) in Dailekh stressed that the injured (on both sides) faced the greatest problems.

However, the perspectives and values placed on truth clearly varied and were not always favorable to effective truth seeking. For ex-PLA members, some of whom continued to be active in the Maoist party at different levels, their perspective on truth predominantly mirrored the party line. In Surkhet, an ex-PLA and current UCPN-Maoist member stated, "Truth must be seen from within the rules of war." Another ex-PLA member expressed the possibility of some civilians having suffered and explained it as accidental ("when lots of dry wood is burnt some green wood is also burnt").

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**"Truth must be seen from within the rules of war"**

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However, truth seeking was seen as a larger conspiracy to target members of the Maoist party and that all charges of conflict-related violations have been politically motivated and manipulated ("all cases of yesterday have been crooked"). In tune with the political leadership, an ex-PLA member stressed that if the truth was really sought, then all parties and leaders would be found responsible for violations ("no parties or leaders would be left untouched").

In the Dailekh headquarters, a Maoist leader warned of the potential danger of asking victims to recount their experiences, which he compared to pulling the scab off a healing wound. He also saw truth seeking only as a source of potential conflict, citing as a serious concern the increasing frustration of victims who have been asked repeatedly to tell their stories without gaining anything in return. In Kapilvastu, a senior politician stated that everything that needed to be known about the conflict had already been made public. According to him, there was nothing that remained hidden or remained to be told. Clearly reflecting a very elite view, and in contrast to the views of victims in the districts who were interviewed for this study, he stated, "I know Colonel Kumar Lama. He is not that kind of person [who commits

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46 According to one interviewee, "There is no easy fit between the truth and Nepal's political culture. That is why, by twisting and knotting it, truth is used for political benefit. That is why, in fact, when talking about the question of truth for people impacted by the conflict, there is an strong inverse relationship with politics. As soon as truth enters, politics becomes weak. As soon as politics becomes strong, truth becomes weak."

torture]. He is the kind of person to implement human rights."

In many cases, victims pointed to elites, patronage networks, corruption, and protection of the powerful at the local level as central obstacles to obtaining justice. In the view of the leader of a large national victims' group, the Local Peace Committees, members of which are political appointees, were key in denying victims access to justice. At a reconciliation meeting in the district development office, the families reportedly were told by the police superintendent, "Whatever was meant to happen happened. Now let us reconcile." In response, for some, such as the families of the five men killed in Dhanusha by state agents, it was the justice system at the national level that offered hope for justice, not local authorities.<sup>47</sup>

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**"Whatever was meant to happen happened. Now let us reconcile."**

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Similarly, for the woman in Dailekh whose husband had been disappeared and who herself was a torture victim,

the national-level TRC was of value because it opened up the possibility that "real" victims would be included: "If this commission is formed, at least victims like us will get some relief." This belief was perhaps a response to the perception that the truth about who the "real" victims were was being distorted at the local level by those who had access to power, giving the impression that the national-level TRC would be able to by-pass such dynamics.

Despite the general lack of political will at the local level to seek the truth, some local leaders seemed more inclined to try to fully understand victims' experiences. An NC political leader in Dailekh believed, for example, "The person who is suffering, to understand their suffering, that is the truth." For this politician, "Amnesty should not be given. If amnesty is given, won't the soul of the local people cry?" A CPN-UML political leader in the same district echoed these sentiments: "There are some incidents that are not worthy of forgiveness. That is what one understands working locally, understanding the feelings of people."

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**"The person who is suffering, to understand their suffering, that is the truth."**

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### **Decentralizing Truth-seeking**

Very few interviewees were familiar with the work of the TRC or CIEDP, revealing significant shortcomings in their outreach strategy and a centralization of their work in the capital. If not addressed immediately, this could weaken the commissions' ability to provide meaningful truth for victims.

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<sup>47</sup> Staff of the Local Peace Committees have been deputed to receive victims' complaints for the TRC and CIEDP.

Those interviewees in the districts who had heard of the TRC or CIEDP were overwhelmingly either residents of the district headquarters (if in the hills) or had been in contact with one or more human rights organizations (in Jhapa, Kapilvastu, and Bardiya).

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**"What use will a commission in Kathmandu be in my village?"**

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Even among these victims, very few held hope for justice from the commissions or felt that victims outside the capital, in particular, would ever see any of their benefits. A woman in a remote VDC in Rukum stated that she had "heard talk" of the TRC but was unsure whether it had been established. She continued, "Even if it were created, what meaning will it have in the village? What use will a commission in Kathmandu be in my village? It will be good if truth comes. But I doubt the commission will come to my village. Democracy might come, but it's hard here. However much they say about human rights, here it is nothing."

Feelings of exasperation over national-local divides were apparent among victims and local leaders alike. Some local leaders emphasized the centralized political power that rendered local initiatives redundant. For example, Local Peace Committee members stressed their powerlessness vis-à-vis the chief district officer and the central-level ministry, with both viewed as barriers to truth seeking. According to an NC politician in Dailekh, detailed records of victims with immediate needs should be collected at the local level and sent to the capital to be addressed. However, many complained that victims' reports, which has been compiled and submitted to the capital, were being put aside and forgotten (in the "dusty drawers of bureaucrats").

## State and Maoist Memorialization Practices

Closely linked with the idea of official truth seeking is the issue of memorialization, which may include architectural memorials, structures, placards, and museums as well as commemorative activities to promote the memory of and pay respect to victims. Done well, memorialization's of victims and key past events can be meaningful for victims, their families and communities, and the larger society by providing recognition, both tangible and symbolic, of victims' suffering and resiliency. Memorials and activities can be used to foster dialogue and reflection, on both the past and the future.

Memorialization has particularly strong historic significance in Nepal and, as interviewees' perceptions and views underscored, specific importance for victims. In general, victims and their families saw memorials as an important way to honor those lost during the conflict, emphasizing the need to establish respect for them and their families. Interviewees expressed a wish to record victims' names and to see conflict victims recognized as such. Memorials were also seen as performing an educational function for present and future generations, enabling stories to be told of the contributions made by victims and ensuring their place in history. However, memorials do not seem to be utilized enough to highlight the ramifications of the past for the present in terms of healing and rebuilding trust or preventing further violence and promoting a culture of “never again” through education and awareness, but they rather tend to serve as static markers of events.

A number of existing, mostly unofficial memorials were discussed in focus groups conducted for this report. In Rukum and Rolpa, a number of gardens, stone resting platforms, paths, and pillars—some bearing the names of the dead—have been erected by local groups to commemorate those lost during the conflict. Similarly, in Jhapa, a pillar was made and erected by community members with victims' names inscribed. In Bardiya, victim-led initiatives have helped to commemorate the missing and the community's sense of ambiguous loss as the fates of some victims remains unknown. In Kapilvastu, a resting place memorializes those who lost their lives during the conflict, and there are plans to include names there in the future.

The impact of these and other memorials in practice varies. They raise awareness and enable a space for the promotion of critical thinking and discussion regarding the representation of the past. For example, writing the names of victims from both sides of the conflict in Jhapa and Rukum, recognizing the contributions of communities to building memorials, and engaging victims' groups and various levels of state actors, civil society, NGOs and community-based organizations, like forest-user groups, appear to encourage civic engagement.

Political and social processes affect memorials' potential for impact. For example, in Rukum, the dominance of the Maoist party has affected the way in which memorialization practices have taken place, and the impact of INGO/NGOs was also seen as a concern. In Jhapa, interviewees raised concerns about being labelled

after joining memorialization efforts as having sold themselves to NGOs, who are sometimes referred to in Nepal as "dollar-earners" assumed to be involved in the work for the relatively high, foreign-funded salaries. While in Bardiya these concerns were not reflected, in Jhapa and Kapilvastu victims and their families expressed concerns about the termination of memorialization projects by the sponsoring NGO, which made holding regular meetings with victims difficult and created problems for the completion of a memorial project in Kapilvastu, as the victims did not have the funds to complete the construction.

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"Whatever your disease is the medicine for that should be given."

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At the same time, in all the districts visited for this study memorials were not seen as sites of healing in the sense of decreasing the suffering felt by victims. A woman from Rukum, while extolling the utility of memorials, stated, "What help will [memorials] and parks do to decrease suffering?" In Bardiya, a man described memorials as "ointments, superficial dressings, that do not decrease suffering." A man in Kapilvastu whose son was disappeared by the state and who had been involved in an international donor-funded memorialization project responded to the question of whether the memorial had decreased his suffering by saying: "If you have gastric pain in your stomach, what will happen if someone puts new clothes on you? The disease is still there. If someone puts ironed clothes on you and sends you to the office, would you be satisfied? Whatever your disease is the medicine for that should be given."

### State Practices

Historically the Nepali state, like other states around the world, has engaged in official memorialization activities, in order to provide the nation with a collective historical narrative. The concept of *martyrdom* is strong in Nepali society, and there is a culture of recognition of individual sacrifice, and its valuation as martyrdom, at the national level.

In particular, the state's current concept of martyrdom has been informed by struggles for democracy against previous governments, including the anti-Rana movements during the first half of the twentieth century and the 1990 Jana Andolan. Signifying the important role of martyrs in the national memory, there is a national holiday called Martyrs' Day (Magh 16 – in late January). Making the day part of the national calendar brings the collective past into the present and encourages what researcher Elizabeth Jelin notes as the performance of the feelings of belonging to community.<sup>48</sup> The holiday is inextricably linked to Sahid Gate (Martyrs' Gate), which is situated prominently in central Kathmandu and commemorates four martyrs who were killed by the Rana Regime in 1941.

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48 Elizabeth Jelin, "Public Memorialization in Perspective: Truth, Justice and Memory of Past Repression in the Southern Cone of South America," *International Journal of Transitional Justice* 1 (2007): 138–156.

## The Evolution of Martyrdom in Nepal

While the idea of martyrdom clearly had existed before in Nepal, it was only after the Maoist conflict started in 1996—and the Maoists’ simultaneous strategic construction and utilization of the term—that it acquired its current meaning.<sup>49</sup> The Maoist definition centers on a culture of self-sacrifice and accompanying ideas of “grandeur, shining glory, and an abstract sort of immortality on the fallen [that] transforms them into stars that light up the dark world.”<sup>50</sup>

The main Maoist victims’ committee for the families of the disappeared changed its name from the Society of the Families of the Disappeared Citizens by the State” to the “Society for Missing Fighters,” as a way to help deflect attention from the enforced disappearances the Maoists themselves had perpetrated. The deliberate vagueness in the definition of “missing fighters,” which applies to party members, PLA fighters, and non-committed people killed by government forces, has enabled a larger population to be part of what the Maoists call a “noble death” and for a *birshadhid* (“heroic martyr”) to be part of the Maoist egalitarian ideology. Importantly, Nepalese culture was and continues to be “fuelled and constructed in the abundant Maoist literature and in ceremonies, memorial parks, songs, and poems.”<sup>51</sup>

Since the beginning of the war, Maoists have erected special memorial gates at village entrances for martyrs and larger monuments and platforms or benches under trees (*chautari*), etc., in the name of martyrs. Many of these memorials coopted traditional practices to increase their legitimacy and demonstrate a connection with minority groups. Anthropologist Anne de Sales has documented the manner in which the Maoists were willing to follow and utilize local Kham Magar traditions in Rukum and Rolpa to situate gardens, stone resting platforms, paths, and pillars for martyrs in specific forms and places where the dead already received regular worship, in order to ensure local communities would accept and use them.<sup>52</sup>

The full force with which the concept of martyrdom took hold in Nepal can be understood as the democratization of the idea of martyrdom in Nepal. This was seen in the large number of requests for declarations of martyrdom following the Jana Andolan-II and the Madheshi Andolan. Partially linked to monetary compensation, but also clearly a result of a perceived need for official recognition, citizens demanded that people who were killed be labeled as martyrs. For Madhesi political parties, during and after the Madheshi Andolan, supporting the call for martyr labels for those killed in the movement boosted their legitimacy and political power vis-à-vis elites in Kathmandu.

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49 Marie Lecomte-Tilouine, “Martyrs and Living Martyrs of the People’s War in Nepal,” *South Asia Multidisciplinary Academic Journal* 4 (2010): 1–19.

50 Marie Lecomte-Tilouine, “‘Kill One, He Becomes One Hundred’: Martyrdom as Generative Sacrifice in the Nepal People’s War,” *Social Analysis* 50 (2006): 53.

51 Marie Lecomte-Tilouine, “‘Kill One, He Becomes One Hundred’: Martyrdom as Generative Sacrifice in the Nepal People’s War,” *Social Analysis* 50 (2006): 51–72.

52 Anne de Sales, “The Kham Magar Country: Between Ethnic Claims and Maoism”, in *Resistance and the State: Nepalese Experiences*, ed. David Gallner, (New Delhi: Social Science Press), 326-357.

One newspaper in early 2013 claimed that since the 2006–2007 People’s Movement, 101 martyrs had been recognized by the Home Ministry under various categories: 26 were killed during the Jana Andolan-II, 30 in the Madheshi Andolan, 4 were “religious martyrs,” and 41 were killed in communal violence and accidents, including a nine-year-old boy killed by a bomb that he mistook for a toy.<sup>53</sup> More stringent criteria for martyrs were made by the national cabinet in 2012 following public criticism.<sup>54</sup>

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**“If they had become a martyr we would have performed the death rites.”**

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Key differences in memorialization practices between districts centered on how victims of enforced disappearance were remembered. The emphasis that the Maoists have placed on “glorified martyrs” has left little room for ambiguity in Rukum in the fate of the missing, with most presumed to have died. This is in contrast to Bardiya, where victim-driven memorialization practices address the impact of the violation—honoring the missing, serving the community, confirming the identities of the families of the missing, and addressing families’ psychosocial needs.<sup>55</sup> Regional differences were also evident in Jhapa, where a man whose son had been disappeared by the state insisted that until the state made the fact public, missing loved ones could not be called martyrs. “It could be that our person is not alive . . . If they had become a martyr we would have performed the death rites (*kajkriya*).”

### **The Importance of Recognition**

Sentiments of victims’ families regarding memorialization stressed the need for recognition and, more specifically, the need for memorials. This illustrates the importance that victims place on public recognition and acknowledgement by other citizens of what happened.

In Jhapa, a woman whose son had been disappeared stated that memorials did not decrease her suffering, but that it would decrease if they were to receive respect from society and the state. In Rukum, a man stated that monetary relief would allow some satisfaction, but not honor and respect, which memorials would provide, in recognizing victims’ service to “society, nation, nationalism.” Such recognition could help to affirm and restore the dignity and public standing of those who have traditionally been undervalued for social, economic and political reasons. Indeed, the need for respect lies behind the importance that victims’ families place on their being recognized as *martyrs*, instead of as *victims of a human rights violation*.<sup>56</sup>

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53 Ibid.

54 Kiran Chapagain, “Martyrdom Criteria Laid Out,” *Republica*, December 28, 2012. As prime minister, Pushpa Kamal Dahal declared that there were more than 8,000 martyrs; later the number was reduced to 6,438. It was said that most martyrs lost their life during the conflict.

55 Simon Robins, “Constructing Meaning from Disappearance: Local Memorialisation of the Missing in Nepal,” *International Journal of Conflict and Violence* 8 (2014): 1–14.

56 ICTJ, “To Walk Freely with a Wide Heart” (2014).

The importance of recognition for victims in Nepal has been recorded before. A 2013 scoping exercise by ICTJ on memorials revealed that victims valued official acknowledgement and recognition by the government over unofficial truth initiatives. In Robins’ work on memorialization and ideas of martyrdom, he argues that “recognition . . . is also seen as giving a place in the nation to those long denied it, a goal for which many families believe their loved one have given their lives.”<sup>57</sup>

### **The Importance of Naming**

The importance placed on naming victims highlighted the value of their social recognition. Interviewees in Jhapa stressed that a memorial pillar that had been collectively built by the community for the disappeared (with NGO funding) recorded victims’ names, a point clearly important to them. In Kapilvastu, original plans to include the names of the disappeared at a rest stop by the highway had to be put on hold due to a lack of funds and the need for further assistance from the local partner. Despite delays, the original plans remained firm.

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**“If something could be built in our village in the name of all conflict victims, maybe there would be pride, happiness, and some relief.”**

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In earlier research in Bardiya, families of the disappeared had expressed anger over the lack of names of the dead and missing on memorial gates erected by the Maoists.<sup>58</sup> The instrumentalization of the memory of the missing for political purposes in Bardiya, with its lack of connection to the families of those being remembered, continues today. Maoist gates were still said not to have incorporated the names of victims. Most tellingly, it was revealed that victims’ families only found out about a memorial that had been built by the Maoist party by someone who happened to have passed by it. The focus group in Bardiya stressed that the memorial was “in the middle of the road,” with no relation to any village or ward, with no names on it. They reported that the Maoist party was “unlikely to put names on it.” The importance of names (inextricably linked with memory and place) was underlined by the group: “If something could be built in our village in the name of all conflict victims, maybe there would be pride, happiness, and some relief.”

### **Financial Contributions**

The contributions of land and financial support from the state, community, and village were apparent in memorialization initiatives in all districts but Bardiya. It was most obvious in Rukum, where victims had requested and received government allocations of public land funds from the budgets of the VDC, Constituent Assembly members, and the Ministry of Peace. However, the influence of political party dynamics was evident in the district, where interviewees stressed that they

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<sup>57</sup> Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice* (New York: Routledge, 2015).

<sup>58</sup> Ibid.



had received the most funds for memorialization when a Maoist headed the Peace Ministry.

In Jhapa, apart from financial assistance received from a partner association of an international organization, funds were gathered from the Ministry of Peace, the Local Peace Committee, and families of the disappeared. Land was obtained with tacit permission from the community forestry association, which told the families, "We can't give you direct written permission but we won't come to break it down if you build it." The Chief District Officer in Jhapa had reportedly been particularly helpful in supporting victims in finding an appropriate place for a memorial, saying "I will give [that space near the road you asked for] to you, but if the road gets widened it will be destroyed and you'll get upset, so instead tell me where you need land and I will get it for you."

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"We would give special thanks if steps were taken [to make that happen], because the names of the martyrs from here would reach afar."

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### **Location of Memorials**

Interviews revealed the importance victims and families place on locating memorials at the national level in addition to the local level, in order to gain wider respect and prestige. In Rukum, apart from stressing the importance of location in terms of where people can see memorials, victims were interested in building memorials outside the village in more populated areas, as a means to increase their importance. For example, one man stated, "More than the village, [the memorial's] importance will naturally be higher in the city." For a local NC politician in Rukum, building memorials in the district headquarters or Kathmandu would increase their "effect," because, as he put it, those who had died had "struggled for the nation." In Bardiya, building memorials in the larger cities of Guleria or Nepalgunj was seen positively: "We would give special thanks if steps were taken [to make that happen], because the names of the martyrs from here would reach afar." Others in Bardiya stated that attempts were being made to build a museum in Kathmandu to remember the disappeared; relevant clothes, books and other belongings were being gathered and safely stored for that purpose.

## Conclusion

This report reveals wide variation in the political and cultural perspectives on the value and meaning of truth in Nepal. For victims, the right to truth is inextricably linked to identifying perpetrators, understanding the causes that led to abuses, the circumstances and facts of violations, and the fate and whereabouts of those who were forcibly disappeared. For others, particularly political actors, truth takes on a more instrumental value—in some cases representing a political compromise necessary for peace and in others a tool for political gain. Many stakeholders also have concerns about identifying the “real” victims, as opposed to those who hadn’t suffered violations but received benefits due to their political connections or patronage networks. Continuing cultural and social constraints prefigured as obstacles to seeking truth for victims of sexual violence.

Varied levels of faith in the country’s two truth commissions to potentially aid or fulfill victims’ right to truth were expressed. Some view the commissions as deeply flawed, and others know little about their existence or purpose. Still, some interviewees expressed hope that the commissions would help victims to overcome many of the barriers they face at the local level to seeking truth and situating their experiences within the broader context of conflict.

While the PLA appears to be the most ideologically bound in their perception of the dangers of national efforts to pursue the truth, the role of local-level politicians is more ambiguous. Both are most in tune with the needs and expectations of victims, yet they were perceived by interviewees as obstructions to fulfilling victims’ rights. At the national level, a lack of accurate knowledge about violations and victims’ needs and rights was apparent. Interviews in Kathmandu reflected only an abstract understanding of the right to truth.

A more nuanced understanding of the value and meaning of truth for victims, and the challenges currently limiting access to it, is critical for ensuring that truth-seeking efforts—both current and potential future initiatives—ultimately facilitate the realization of the right to truth for victims of human rights abuses and other serious crimes under international law. Also important in achieving this is an awareness of Nepal’s historical relationship with concepts such as truth, memorialization, and martyrdom. Together, these different components inform the identification of concrete ways forward for meaningful, victim-centered truth seeking in Nepal.

## Recommendations

The analysis in this report lends itself to making some recommendations for the realization of the right to truth for victims of human rights abuses and other serious crimes under international law during Nepal's 1996–2006 internal armed conflict.

### To the TRC and the CIEDP

- **Fully and effectively implement their mandates and ensure the vindication of victims' rights.**
- **Educate the public about the context and causes of violations, so as to encourage prevention and non-repetition.**
- **Disseminate information about the circumstances, motivations, methodologies, and consequences of violations in locally relevant languages.**
- **Implement effective channels to ensure that civil society organizations, victims' groups, and other key stakeholders can contribute to the work of the TRC and the CIEDP;** include and encourage their active engagement, involvement, and participation throughout the process.
- **Hold sessions and hearings in all parts of Nepal, including remote and rural locations,** so as to engage all Nepalis in truth seeking. Make efforts to reach victims residing in remote areas, those who may not know about the commissions' mandate, and those that may be more vulnerable to undue pressure from perpetrators or their associates not to participate, in order to provide them with a safe opportunity to file a claim if they so wish.
- **Encourage memorials and commemorative events that incorporate victims' names.** Recommend memorialization processes that both assist victims in articulating their experiences of human rights violations and abuses and create space to promote learning from the past and non-repetition in the future.

### To Nepali Policy Makers

- **Provide strong political support and adequate state resources to facilitate the realization of the right to truth for victims of serious human rights violations and other crimes under international law during the 1996/2006 armed conflict in Nepal.**
- **Establish opportunities for meaningful participation of victims and civil society in crafting and implementing credible truth-seeking measures, including the TRC and CIEDP.** Ensure transparency in the process in order to build society's trust in the TRC and the CIEDP.

- **Conduct public awareness campaigns on both the legal remedies available to those who wish to pursue criminal cases and how to access legal assistance.**
- **Publicly recognize victims as citizens harmed as a result of human rights violations.**
- **Issue an official apology to victims for human rights violations experienced at the hands of state actors as well as for the state's failure to protect victims of violations committed by non-state armed groups.** The specifics of the apology should be decided on in consultation with victims' groups, and it should be issued as part of a prominent public event, preferably attended by representatives of these groups.

#### **To Civil Society**

- **Promote public awareness and shape opinions in Nepal towards promoting the right to truth and accountability for serious international human rights and humanitarian law violations through the judiciary, the TRC, and the CIEDP.**
- **Pressure government to ensure it complies with the Supreme Court ruling not to allow amnesty for serious human rights violations.**
- **Promote community-based memory work;** victims and local communities should have ownership of the memorialization process and, therefore, be involved in deciding on the location, form, and construction of memorials. Working together on memorials can encourage collaboration among opposing parties in the conflict and assist in developing debate around what really happened during the conflict. Memorials could include museums or documentation centers at the local and regional levels and at sites of violence.
- **Support the prosecution of emblematic cases involving those responsible for the worst offences.**
- **Engage critically and constructively in the work of the TRC and the CIEDP by contributing insights and information, facilitating access to victims, and monitoring and observing.**





# ICTJ

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