

Transitional Justice in Nepal: Still a Long Way to Go

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The Supreme Court of Nepal [rejected a petition](#) filed by the government seeking review of a [judgement](#) passed by the Court in 2015 where the Court ruled that the law failed to reach the objective of the principles of Transitional Justice and directed the interim government to revise the [Truth & Reconciliation Act, 2014](#). Since then there had been up to [25 petitions filed](#) by the government where the Court was deliberately postponing its hearing before a bench led by five judges concluded by rejecting it on the grounds where the earlier decision was based on the notion of Transitional Justice and International Practices this year in April.

A decade long civil war resulted not only with the victims losing their family members and being displaced but also with a loss of faith over the government. It has been nearly 14 years since the [Peace Accord](#) was signed between the rebellions and the government; still, the victims have not been provided justice, and neither the government nor the political leaders are showing a willingness to take accountability for reparations. In the respective Agreement, Transitional Justice was contemplated in two ways: the Truth & Reconciliation Commission (TRC) and Commission of Investigation on Enforced Disappearance Persons (CIEDP); but those were only showcased as a formality to deter from any domestic or international badgering. By the [initial stage](#), these two Commissions had gone through problems in financing and logistics and also due to Nepal's political instability its implementation was not given much attention by the successive governments with regards to amendments. Both the Commissions cannot investigate such cases without the amendments. Nearly [63,000 complaints](#) have been filed before the TRC till date where out of which only 3,700 has completed its investigation; and as per the Commissions it has been classified under three categories: standby, reparation process and further investigations. There have been [reports](#) where victims have complained against the staff members of the Commission for professional misconduct and sexual harassment. Victims are often kept in stress as the commissions are inclined more towards documentary evidence which only a few can possess because either it didn't exist or were dismantled. Among the victims, women have to go through [various barriers](#). Some of them are ostracized by the society; widows have to face problems while transferring property on their name or to apply for welfare schemes, and lastly lack representative support for girls of minor age groups. Currently, the pandemic has [severely affected](#) the Commission's functioning.

There is much uncertainty with respect to the provision of the Act. The term "gross violations of human right" has been drafted ambiguously as it includes every possible crime committed during the civil war ranging from heinous offences such as rape, murder to even crimes like unlawful possessions, damage to public property etc. [As per](#) international laws, these provisions are not holistically approved. In order to be so, it has to consist of four elements which

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are the right to reparations, right to know the truth, right to justice and shall constitute a guarantee of non-recurrence. More commonly, these four elements are known as the [Joinet/Orentlicher principle](#). Similarly, Section 26(5) provides that the Commission would grant amnesty upon observing the magnitude of the case and also considering if there are any agreements or disagreements from the victims. The Court found this provision problematic because it might allow the Commission to grant amnesty if even the victims disagree.

Politicians who were previously engaged in the decade long guerilla war have significant concerns over existing provisions of the Act as well. They insist upon the Commissions to deal with war crimes. Political instability has been one of the major reasons for the Commission to not function properly. Neither any political parties nor the politicians, in their personal capacity, have shown any interest in making the process steadier and gratifying. [Even after the](#) truce in 2006, there was more emphasis on drafting the new Constitution and incorporating the guerilla soldiers within the military, whereas there wasn't much priority given towards implementing mechanisms for prosecuting war-era crimes. Consequently, the majoritarian government, which was obviously the CPN-Maoists, [justified](#) their war-era violence towards political amnesty. Observing the following turmoil with regards to the Commission's functioning and lack of political will, this issue is on the verge of gaining international attention. [In 2012](#), the Nepalese army Colonel Kumar Lama was arrested on the grounds of committing torture during the civil war. Many international organizations have been advocating on behalf of the victims by expressing solidarity and even criticizing the government for its inadequacy. [Organizations](#) such as Amnesty International, TRIAL International and Human Right Watch have repeatedly shown their concern by condemning the lack of political will to address the issue. According to the universal jurisdiction of Human Right, if this delay keeps on to continue then Nepal's justice mechanism would definitely be questioned by International Criminal Courts. If we look historically, there have been numerous instances of human right violations that have occurred around the globe. Likewise, from the [Nuremberg Trials](#) to establishing war crime tribunals in various post-conflict nations, there has been [significant development](#) in restoring the value of humanity and prosecuting the culprits in an impartial manner. For example, under the bilateral agreements between the [UN and Cambodia](#) as well as [Sierra Leone](#), there has been the establishment of hybrid international tribunals. In the context of Nepal, many war victims have approached the national Courts to access justice for violence which they have experienced during the civil war, but unfortunately neither the demands of the victims have been fulfilled, nor such amnesty has been provided to those who were wrongfully convicted. Hence, the Nepalese legal system needs to work on the various loopholes which are disrupting the process of Transitional Justice or else it might not be too far for another political or military personnel to be prosecuted with international pressure.