

# **Towards a victim-centred transitional justice: Understanding the needs of wives of the disappeared in post-conflict Nepal**

Simon Robins<sup>1</sup>

Post-war Reconstruction and Development Unit, University of York, UK.

## **Abstract**

Transitional justice aims to address issues arising from violations committed during conflict or political violence. It does this however in largely prescriptive and institutional ways, often elite led and subject to existing power relations; as a result many transitional processes fail to consider the demands of transition of victims of conflict and in particular those most socially excluded such as women. Here an effort is made to steer a 'victim-centred' transitional justice by considering the priorities of the wives of the disappeared. Whilst disappearance is a violation mostly perpetrated by men on men, wives of the disappeared are most impacted by it. This empirical study uses participatory and ethnographic research methods to understand the needs of the wives of those disappeared during Nepal's Maoist insurgency. It is seen that an answer regarding the fate of the disappeared, economic support and social issues are their priorities and that they have been ill-served by the lack of transitional mechanisms and by civil society's emphasis on an exclusively prosecutorial agenda. A victim-centred transitional justice is likely to be one that consults broadly with such victims, and dispenses with the narrow legalism that dominates the discourse today.

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<sup>1</sup> [simon.robins@simonrobins.com](mailto:simon.robins@simonrobins.com)

## Victim needs and transitional justice

### Introduction

Disappearance is a violation that largely targets men and is overwhelmingly perpetrated by men. It is women however, notably the wives and mothers of the disappeared, who are most impacted by disappearance and are themselves its victims.<sup>2</sup> Here, an empirical study of the needs of wives of the disappeared in post-conflict Nepal is made, with a view to understanding the limits of the current practice of transitional justice in addressing those needs.

The discourse of transitional justice has arisen as a response to the challenges of societies emerging from conflict or political violence and has become the preferred lens through which to examine democratising states. Typically, it describes institutional responses to violations of international humanitarian law, human rights law or domestic law that occurred during a previous regime. Despite a widespread understanding that it is the poor and disempowered who suffer most in conflict and political violence, a sustained engagement with such constituencies has not become part of the mainstream practice of transitional justice. Transitional processes and the mechanisms (such as trials, truth commissions and reparation schemes) through which they work tend to be top-down:<sup>3</sup> they are created by elites, often those who were themselves involved in the conflict that preceded the transition, supported by an international community remote from the context and from indigenous understandings. In many cases processes of consultation with victims and communities have been cursory.<sup>4</sup> Some literature is now emerging to challenge this deficit,<sup>5</sup> but there remains a dearth of praxis that interrogates the idea of a transitional justice driven by the grassroots.

To privilege a victim perspective, studies are required that engage with those who have experienced violations, understanding the meaning that populations give to such events and the symbolic and social worlds people occupy. To root a response to gross violations in the experience of those most affected demands an empirical and an ethnographic approach to reach a holistic understanding of the transformations wrought by conflict. Such an approach necessitates empirical work of a highly interdisciplinary nature and an understanding of the role of the so-called “primary” institutions of the family and community that hold the key to recovery from such extreme events. Here, an effort is made to explore how a *victim-centred* transitional justice process could be constructed; to ground such a paradigm in the needs expressed by victims, to explore the empirical methods by which such needs are evaluated and to make a study of the needs of a particular set of highly disempowered victims, namely the wives of those disappeared during Nepal’s decade long Maoist insurgency.

This article begins by discussing the limits of current practice in transitional justice in serving victims and then reviews existing theory and practice with an emphasis on efforts to

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<sup>2</sup> UN Declaration on the Right to Restitution for Victims of Gross Human Rights Violations, UN General Assembly, A/RES/60/147 (New York: UN General Assembly, 1999); International Convention for the Protection of All Persons from Enforced Disappearance (New York: OHCHR, 2006), <http://www2.ohchr.org/english/law/disappearance-convention.htm> (accessed 14th December 2009).

<sup>3</sup> Kevin McEvoy and Lorna McGregor, ‘Transitional justice from below: An agenda for research, policy and praxis’, in *Transitional justice from below: Grassroots activism and the struggle for change*, ed. Kevin McEvoy and Lorna McGregor (Oxford: Hart, 2008).

<sup>4</sup> Patricia Lundy and Mark McGovern, ‘Whose justice? Rethinking transitional justice from the bottom up’, *Journal of Law and Society*, 35(2), 2008: 265 - 292.

<sup>5</sup> McEvoy and McGregor, *supra* n. 3 at 2.

understand victim agendas in transition. The literature addressing the violation of disappearance is then briefly discussed, before reviewing the context of Nepal, in terms of the conflict, its ongoing transition and approaches to the issue of disappearance. The participatory ethnographic methodology of the study is discussed and the findings summarised in terms of the needs identified by wives of the disappeared. These are briefly analysed in the light of the ongoing transitional process in Nepal, and the implications reviewed for policy in the country and for transitional justice practice more broadly.

### **Transitional justice: The limits of current practice**

The 'pillars' of transitional justice have been described as "prosecutions, truth commissions, reparations, institutional reform and reconciliation initiatives".<sup>6</sup> Such a prescription constrains transitional justice to be largely an institutional process and this has been challenged by those who assert that recovery from conflict must be rooted in an understanding of how mass violations have impacted and transformed affected populations.<sup>7</sup> This institutional approach is necessarily distanced from victims of violations, since a majority will never access these institutions directly. The one mechanism that should in principle have greatest contact with victims is that of reparations, but in both literature and practice, prosecutions have led the agendas of those advocating for transitional justice.<sup>8</sup> Global priorities are demonstrated by the billions spent on the International Tribunals for Rwanda and the former Yugoslavia in comparison with reparative processes such as the Victims' Trust Fund of the ICC<sup>9</sup>.

Both the literature and practice around gender issues in transitional justice emphasise sexual violence against women, and more particularly judicial process to address such violations.<sup>10</sup> This discourse reduces women to their injury in a violation and perpetrator centred way, rather than discussing the gendered power relations that lead to violations. The focus on sexual violence allows the cultural and socioeconomic issues that often underlie disempowerment to be neglected, and ignores the structural violence in a context such as Nepal where women are also marginalised by ethnicity, caste and class. Studies in low income states show that victims emphasise a need for basic services rather than processes which focus narrowly on the violation that victimised them.<sup>11</sup> Victims' emphasis on livelihood

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<sup>6</sup> Vasuki Nesiah, 'Discussion lines on gender and transitional justice: An introductory essay reflecting on the ICTJ Bellagio workshop on gender and transitional justice', *Columbia Journal of Gender and Law* 15(2002) 3: 799-812.

<sup>7</sup> See, for example: Béatrice Pouligny, Bernard Doray and Jean-Clément Martin, 'Methodological and ethical problems: A trans-disciplinary approach', in *After Mass Crime: Rebuilding states and communities*, ed. Béatrice Pouligny, Simon Chesterman and Albrecht Schanbel (Tokyo: UNU Press, 2007); Mary Breen Smyth, *Truth Recovery and Justice after conflict: Managing Violent Pasts* (London: Routledge, 2007).

<sup>8</sup> Pablo de Greiff, "Introduction. Repairing the Past: Compensation for Victims of Human Rights Violations," in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006): 1–2.

<sup>9</sup> Helena Cobban, International Courts, *Foreign Policy* March/April 2006, 22-28; Frédéric Mégret, Justifying Compensation by the International Criminal Court's Victims Trust Fund: Lessons from Domestic Compensation Schemes, (November 5, 2009), <http://ssrn.com/abstract=1501295>, accessed 14th December 2009.

<sup>10</sup> See for example: Fatima Ayub, Sari Kouvo and Yasmin Sooka, Addressing Gender-specific Violations in Afghanistan, International Center for Transitional Justice, February 2009; Colleen Duggan, Claudia Paz y Paz Bailey and Julie Guillerot, 'Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru', *The International Journal of Transitional Justice*, Vol. 2, 2008, 192–213; Nicola Henry, 'Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence', *The International Journal of Transitional Justice*, 2009, 1–21.

<sup>11</sup> Ruth Rubio-Marin, 'The gender of reparations', in ed. Ruth Rubio-Marin, *What Happened to the Women: Gender and Reparations for Human Rights Violations* (New York: Social Science Research Council, 2006); International Center for Transitional Justice and the Human Rights Center, University

demonstrates that they seek to challenge the poverty of the status quo ante, rather than seek a return to it through a purely restitutive process. It also suggests that many victims are unaware of rights or the possibilities of rehabilitation or compensation. This challenges thinking about what could constitute a reparations process in such contexts. If transitional justice aims "...to address the past in a constructive future-oriented manner"<sup>12</sup> then it must confront the structural violence of social exclusion that led to conflict, as well as the violence of violations. Nepal's conflict emerged from systematic social, economic and political marginalisation on the basis of ethnicity, gender, caste and class.<sup>13</sup> Those most disempowered in Nepal seek a transitional justice that aids their empowerment, and addresses not just the direct impact of conflict but also helps deliver social justice as part of Nepal's transition.

The principle role of victims in the mechanisms that constitute contemporary transitional justice is in the giving of testimony. Whilst this can galvanise a victims' support movement, as it did in South Africa, testifying is a necessarily passive interaction that can only ever involve a minority of victims. This study suggests that mobilisation of victims is a strategy that will increase their role in the transitional process and empower them. This will aid the creation of a transitional justice that is not violation and perpetrator centred, but one that is victim centred and addresses the histories of marginalisation that define the lives of the excluded and enable violations. The term victim-centred has been used by many transitional processes, most often in an attempt to suggest that the process places the victim at its centre, in a reference to a principle of restorative justice<sup>14</sup>. Here, the term *victim-centred* is used to define a transitional process or mechanism that arises as a response to the explicit needs of victims, as defined by victims themselves. A victim-centred approach thus requires a process either of broad consultation with victims, or for victims and their representatives to be engaged at all levels of the planning and implementation of transitional process.

Whilst the rights discourse underpins transitional justice, here needs are taken as the focus of the study for several reasons. Firstly, it will be seen that in the context of Nepal most victims know little of rights and instead articulate needs. The language of rights is an alien one to many and victims' daily experience confronts them with unmet needs, very often the most basic. Whilst it is asserted that since rights can be *claimed* they give victims agency,<sup>15</sup> privileging an external discourse can in practice empower elites and outsiders at the expense of victims,<sup>16</sup> particularly the most disempowered who have both the greatest needs and least access to the language of rights. Secondly, whilst the rights discourse claims to address all rights equally, in practice civil and political rights are prioritised over the social,

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of California, Berkeley, Living with Fear: A population-based survey on attitudes about peace, justice and social reconstruction in Eastern DRC, (ICTJ / HRC Berkeley, 2008):1; Daniel Aguirre and Irene Pietropaoli, 'Gender equality, development and transitional justice: The case of Nepal', *The International Journal of Transitional Justice* 2 (2008):1-22.

<sup>12</sup> Andrew Rigby, *Justice and reconciliation: After the violence*, (London: Lynne Rienner, 2001), 2.

<sup>13</sup> Krishna B. Battachan, 'Report: Indigenous nationalities and minorities of Nepal', (Kathmandu: Tribhuvan University, 2006); Deepak Thapa and Bandita Sijapati, B., 'A kingdom under siege: Nepal's Maoist Insurgency, 1996-2003', (Kathmandu, The Printhouse, 2003).

<sup>14</sup> Republic of South Africa 2003. *Truth and Reconciliation Commission of South Africa report* (final report). Available at <http://www.truth.org.za/> (accessed 3<sup>rd</sup> December 2009); Raquel Aldana, 'A Victim-Centered Reflection on Truth Commissions and Prosecutions as a Response to Mass Atrocities', *Journal of Human Rights* 5:1 (2006),107-126.

<sup>15</sup> Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2003),164.

<sup>16</sup> Simon Robins (in review), 'Transitional justice as an elite discourse: Human rights practice in post-conflict Nepal', *Critical Asian Studies*.

economic and cultural.<sup>17,18</sup> Thirdly, the result of ignoring the needs of victims can be a perpetuation of the cycle of conflict, which is largely driven by attempts to address perceived grievances that arise from previous violence.

### Understanding victim agendas

In many post-conflict interventions both the individual and collective consequences of violations remain largely unexamined. Indeed, much of the literature of transitional justice is of experts speaking *for* victims.<sup>19</sup> The roots in law of the human rights discourse leads human rights practice in conflict and post-conflict environments to place an emphasis on the investigation of the facts of violations, prioritising outcome over a process of engagement with victims and an understanding of the challenges they face. It can be problematic to consider women's role in conflict solely as victims. Indeed, women's experience of the conflict in Nepal includes roles as actors, not least as a significant fraction of the Maoist People's Liberation Army. It remains a fact however that women's dominant experience is one of victimisation: as casualties of conflict, refugees, victims of sexual violence and, as in the case of the disappearance of men, those who have lost family members and breadwinners.<sup>20</sup> The challenge for those perceiving themselves as victims is to ensure that is a positive and active identity, rather than serving to increase isolation and passivity. Again, mobilisation is key.

Disappearance gives rise to a need for truth and justice, but the range of victim needs goes far beyond this. Studies have been made of both the general impact of war on civilians and of families of the disappeared in particular, dominated by approaches that privilege investigations of the psychological sequelae of trauma, and in particular posttraumatic stress disorder (PTSD).<sup>21</sup> The issues of missing persons and human remains necessarily engage with context specific emotional, psychological and spiritual understandings and as such demand an engagement with culture to create process that is steered by needs that are highly local.<sup>22</sup> Whilst 'healing' has been understood in human rights literature as intrinsically linked to truth and justice,<sup>23</sup> the little empirical evidence suggests otherwise.<sup>24</sup>

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<sup>17</sup> Louise Arbour, 'Economic and social justice for societies in transition', *NYU Journal of International Law and Politics*, 40 2007-8.

<sup>18</sup> With specific reference to Nepal: Tafadzwa Pasipanodya, 'A Deeper Justice: Economic and social justice as transitional justice in Nepal', *The International Journal of Transitional Justice* 2 (2008): 378–397; Daniel Aguirre and Irene Pietropaoli, 'Gender equality, development and transitional justice: The case of Nepal', *The International Journal of Transitional Justice* 2 (2008):1-22.

<sup>19</sup> Sarah Cullinan, *Torture survivors' perceptions of reparation*, (London: The REDRESS Trust, 2001), 19.

<sup>20</sup> Turpin, J. (1998) 'Many Faces. Women Confronting War.' In Lorentzen, L. A. and Turpin, J. *The Women & War Reader*. (New York University Press: London)

<sup>21</sup> e.g. Gregory J. Quirk and Leonel Casco, 'Stress disorders of families of the disappeared: a controlled study in Honduras', *Soc. Sci. Med.* 2004 39(12): 1675-1679; Pau Pérez-Sales, Teresa Durán-Pérez and Roberta Bacic Herzfeld, 'Long-term psychosocial consequences in first - degree relatives of people detained - disappeared or executed for political reasons in Chile. A study in Mapuce and Non-Mapuce persons', *Psicothema* 12 (2000) Supl.:109-116.

<sup>22</sup> Shari Eppel, 'Reburial ceremonies for health and healing after state terror in Zimbabwe', *The Lancet* 360, 9336 (2002): 869-870.

<sup>23</sup> R. Gurr and J. Quiroga, 'Approaches to Torture Rehabilitation: A Desk Study covering Effects, Cost-effectiveness, Participation, and Sustainability', *Torture*, 2001, Vol.11 Supplementum No.1, pp. 3-35.

<sup>24</sup> Jamie O'Connell, 'Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?', *Harvard International Law Journal*, 46 (2005) 2; Fletcher and Weinstein, 'Violence and social repair: Rethinking the contribution of justice to reconciliation', *Human Rights Quarterly* 24(2002) 573-639; Brandon Hamber, 'The Need for a Survivor-Centered Approach to the Truth and Reconciliation Commission', *Community Mediation Update*, Issue 9 (Community Dispute Resolution Trust, Johannesburg, South Africa), Jan. 1996.

A recent development has been the use of social science research methods to determine the attitudes of populations of states in transition as a tool to make transitional process responsive to the perceptions and needs of those most affected. This approach, pioneered by the Berkeley Human Rights Centre, uses a mix of qualitative and quantitative methods with the ambition of delivering “evidence based transitional justice”.<sup>25</sup> It has been used in several contexts, including the former Yugoslavia, Iraq, Rwanda and northern Uganda.<sup>26</sup> Whilst these studies have permitted the priorities of affected populations to emerge, including in some cases the needs of families of the missing and disappeared, their research goals were not to understand the needs of research subjects, but focussed on externally defined agendas. A more recent study in the east of the D.R.Congo used both quantitative and qualitative approaches with a specific remit to ‘understand the priorities and needs of Congolese civilians affected by the conflicts’.<sup>27</sup> In Nepal one empirical study has been made explicitly targeting victims of the conflict,<sup>28</sup> but using methodologies that have been subject to criticism for reflecting an external agenda of retributive justice, and emphasising civil and political rights over victims’ priorities in terms of basic needs.<sup>29</sup> Such exercises can allow transitional justice to respond to needs, but are likely to be less effective than the direct mobilisation of victims. Disappearances in Latin America in the 1970s and 1980s gave rise to longstanding victims’ movements, such as the Madres de Plaza de Mayo, whose members provided both support and solidarity to each other and were able to represent victims’ views to the authorities. Here, empirical studies to understand victims’ agendas are made in collaboration with victims’ organisations.

## Disappearances in Nepal

Nepal’s Maoist insurgency was driven by a legacy of centuries of feudalism in a Hindu kingdom built on a codified framework of social and economic exclusion that marginalised indigenous people, lower castes and women. The vast majority of the nation’s almost 30 million people live in rural areas, working in agriculture and living lives of desperate poverty. Women are further marginalised as a result of prevailing attitudes derived from high-caste Hindu culture that defines a woman’s role narrowly. Women marry to gain access to property and social acceptance but have no inheritance rights,<sup>30</sup> they are expected to work and to produce sons and their value to the family lies largely in this. As a result the loss of a husband can have catastrophic consequences. Women consistently fall behind men in educational achievement and skill development, often leaving them with few livelihood opportunities.

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<sup>25</sup> Phuong Pham and Patrick Vinck, ‘Empirical Research and the Development and Assessment of Transitional Justice Mechanisms’, *The International Journal of Transitional Justice*, 1 (2007): 231.

<sup>26</sup> Miklos Biro et al., ‘Attitudes toward justice and social reconstruction in Bosnia and Herzegovina and Croatia’, in *My neighbour, my enemy*, ed. Eric Stover and Harvey M. Weinstein, (Cambridge: CUP, 2004); International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley, *Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction*, (ICTJ / HRC Berkeley, 2004); Phuong N. Pham; Harvey M. Weinstein; Timothy Longman, ‘Trauma and PTSD Symptoms in Rwanda: Implications for Attitudes Toward Justice and Reconciliation’, *AMA*, 2004;292(5):602-612; International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley, *Forgotten Voices: A population-based survey on attitudes about peace and justice in Northern Uganda*, (ICTJ / HRC Berkeley, 2005).

<sup>27</sup> International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley, *Living with Fear: A population-based survey on attitudes about peace, justice and social reconstruction in Eastern DRC*, (ICTJ / HRC Berkeley, 2008):1.

<sup>28</sup> International Centre for Transitional Justice and Advocacy Forum, *Nepali Voices: perceptions of Truth, Justice, Reparations and The Transition in Nepal*. (Kathmandu: ICTJ / AF, 2008).

<sup>29</sup> Robins, Simon. 2009. Whose voices? Understanding victims' needs in transition. *Journal of Human Rights Practice*, 1(2): 320; Pasipanodya; Aguirre and Pietropaoli, supra n.18 at 5.

<sup>30</sup> ADB, ‘Women in Nepal: Country briefing paper’ (Asian Development Bank, December 1999).

In 1996 a small party from among Nepal's fractious Marxist left, the Communist Party of Nepal (Maoist) [CPN-M], declared a 'People's War' against the newly democratic regime that had failed in the 5 years since the end of absolute monarchy to address issues of poverty, uneven development and social exclusion. The insurgency grew rapidly from its initial base in the hills of the impoverished Mid-west with the Maoists conducting military operations throughout the country. They propounded a politics that explicitly encompassed an end to exclusion on the basis of ethnicity, caste and gender and as a result a significant fraction of their cadres were drawn from these marginalised groups.<sup>31</sup> The CPN-M has claimed that 40% of its cadres (both military and political) are women<sup>32</sup> but it remains the case that the leadership is dominated by high caste men.

Whilst disappearances had occurred from the start of the conflict, and even before it, the introduction of the Royal Nepal Army (RNA) into the conflict in 2001 dramatically increased human rights violations of all kinds<sup>33</sup>. Between 2000 and 2003 Nepal was responsible for a greater number of cases of disappearance reported to the UN's Working Group on Enforced Disappearances than any other state;<sup>34</sup> disappearance has become the defining violation of the conflict. The conflict came to an end in April 2006, with a 'People's Movement' uniting the Maoists and the constitutional parties against a king who had seized absolute power. As part of an ongoing peace process the monarchy has been abolished and following elections to a constituent assembly the Maoists are now the largest party in the legislature. The conflict has left a legacy of some 15,000 dead,<sup>35</sup> and more than 1,200 unaccounted for.<sup>36</sup>

Whilst disappearances<sup>37</sup> were perpetrated by the Maoists, the vast majority were the responsibility of the forces of the state, apparently as a deliberate strategy of war by military commanders at several levels in the hierarchy. One motivation was the elimination of those perceived as part of the Maoist threat, and this appears to be what drove the disappearance and apparent extra-judicial execution of students and others perceived to be Maoist activists. In rural areas there were additional dynamics that encouraged disappearance linked to the traditional power structures of caste, class and ethnicity that were the underlying cause of the conflict. In Bardiya for example, the district worst affected by disappearance, the People's War was perceived by many as the continuation of a long running conflict over land between the majority indigenous Tharu community and high caste landlords who had established control of much agricultural land over recent decades. In addition to disposing of Tharu activists, the RNA leadership in the region had an interest in enforcing traditional power relations, and the wave of disappearances that followed the declaration of the state of emergency in 2001 achieved this. In Bardiya, the arrest of victims from their homes at night, in many cases by forces acting on information from informers, was in the tradition of authoritarian regimes deliberately creating an atmosphere of terror in communities perceived

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<sup>31</sup> Susan Hagen, 'Creating a "New Nepal": The ethnic dimension', *Policy Studies* 34, (Washington: East-West Center, 2008).

<sup>32</sup> Interview with Comrade Jayapuri, Revolution in South Asia website, 15<sup>th</sup> Sept. 2009, <http://southasiarev.wordpress.com/2009/09/15/interview-comrade-jayapuri-of-the-ucpn-on-the-struggle-of-women-in-nepal/>, accessed 14<sup>th</sup> December 2009.

<sup>33</sup> Informal Sector Service Centre (INSEC), *Human Rights Yearbook 2007*, (Kathmandu: INSEC, 2007).

<sup>34</sup> Human Rights Watch, *Between a rock and a hard place: Civilians Struggle to Survive in Nepal's Civil War*, (Washington: Human Rights Watch, 2003).

<sup>35</sup> INSEC, *supra* n. 33 at 7.

<sup>36</sup> International Committee of the Red Cross, *Missing persons in Nepal: The right to know*, (Kathmandu: International Committee of the Red Cross, 2008).

<sup>37</sup> According to the definitions of international human rights law only forces linked to a state can perpetrate disappearance (although states are obliged to investigate those perpetrated by non-state actors); here, the term disappearance will be assumed to also include cases of abduction perpetrated by non-state parties to the conflict in Nepal, notably the CPN-M.

as being loyal to the insurgency. One of the most well known cases of disappearance in Nepal concerns a fifteen year old girl from a *dalit*<sup>38</sup> community who was arrested by RNA troops, tortured to death and buried at an army camp.<sup>39</sup> The same group of soldiers had earlier raped and killed other teenagers from the community, putting issues of caste and gender at the heart of the violations.

Families close to the CPN-M first established an association of families of the disappeared in Kathmandu during the conflict, bringing together families to campaign for the state to inform them of the whereabouts of relatives. Soon after the end of the conflict family associations were established in other parts of the country, organised at the district level by families themselves, often independent of any political party and trying to represent victims of both sides. Family associations have articulated the demands of victims, seeking livelihood assistance and advocating for truth and justice from the authorities; they have also been a valuable mechanism of solidarity and support. They have had a sometimes problematic relationship with human rights agencies and in contrast to well funded agencies have had little success in gaining donor support.<sup>40</sup> The authorities have largely declined to engage with the family associations. As in all arenas of life in Nepal, men have taken lead roles in the family associations. Women, however, constitute the bulk of those active in family associations and agendas that emphasise those issues of greatest priority to women, notably the economic, form part of their advocacy.

## Methodology of the study

The research methodology is driven by the aim of allowing the voices of victims to contribute to the debate about dealing with the past. The research design process was executed in a participatory way with the family associations who determined that the research would be rooted in an advocacy effort and would be ethnographic. Families wanted their needs communicated and the final research report allowed the dissemination of the results of the study as a tool of advocacy.<sup>41</sup> Whilst the methodology presented here does not replace the mobilisation of victims to represent themselves, it does allow for a process that engages victims and their organisations in a way that not only allows their voices to be heard and identifies local resources, but gives those organisations a concrete advocacy tool. The study emphasised the *goals* of transition, motivated by the lack of knowledge of potential mechanisms by victims.

Respondents were drawn from a list drawn up by the International Committee of the Red Cross (ICRC) of 1,227 persons missing as a result of the conflict,<sup>42</sup> compiled during ICRC's presence in Nepal since 1998, through visits to communities and from statements made by families who visited ICRC's offices. A selection of 10 of Nepal's 75 districts was made that enabled the worst affected districts to be included, whilst also ensuring a spread by region, geography (plains, hills, mountains), ethnicity and alleged perpetrator (state, Maoist). These 10 districts account for 43% of those on the ICRC list. Within these districts a random selection was made, and families visited in their homes. 86 families were interviewed, the majority with the family as a unit. Where possible, younger wives of the disappeared were met alone or in peer groups to understand potentially problematic dynamics within the family. The data discussed here focuses on 26 wives of the missing

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<sup>38</sup> *Dalit*: a self-designation for a group of people traditionally regarded as low caste or untouchable.

<sup>39</sup> Office of the High Commissioner for Human Rights, *The torture and death in custody of Maina Sunwar: summary of concerns*, (Kathmandu: OHCHR, 2006).

<sup>40</sup> Robins, *supra* n. 16 at 4

<sup>41</sup> International Committee of the Red Cross, *Families of Missing persons in Nepal: A study of their needs*, (ICRC: Kathmandu, 2009).

<sup>42</sup> International Committee of the Red Cross, *Missing persons in Nepal: The right to know*, (Kathmandu: International Committee of the Red Cross, 2008).

interviewed alone, with their families, and in peer groups. The sample of women includes 21 from traditionally excluded indigenous ethnic groups or lower Hindu castes.<sup>43</sup> 20 involve disappearances perpetrated by the state and 6 by the CPN-M.

Interviews typically lasted around 90 minutes and were semi-structured, based on a 7 page script that had been developed in conjunction with family associations over a 2 month period prior to the research. Families were invited to prioritise their needs relating to their disappeared relative through a series of open questions, and then probed about specific elements of those needs. Additionally, 10 focus groups containing a total of 74 relatives of the disappeared were conducted with peer groups selected by family associations. All focus groups contained wives of the disappeared; one contained only women and another only wives. The research was conducted over a six month period two years after the end of the conflict. Disappearances discussed here took place between two and twelve years prior to the study, and on average five years before. Whilst a minority of the disappeared are educated and urban, most come from rural peasant backgrounds and their families are illiterate and poor. The typical interviewee is thus a rural woman of low educational level from an indigenous ethnic group. All interviews and focus groups were recorded and these translated and transcribed; these texts were iteratively coded for analysis by both frequency of topic data and for selection of relevant text segments.

The collaboration with the family associations served to build trust with research participants and allow effective 'emotional access'.<sup>44</sup> The easily understood advocacy aim of the research ensured an ethical relationship between the researcher and the researched and eased issues around informed consent.<sup>45</sup> In addition to steering the research goals and methodologies, the community of victims was able to provide counselling and support to families around the research process.

The response of families to the study varied; some were angry that many agencies had collected data from them, but no action had been taken. In the majority of cases, however, particularly in rural areas, family members were grateful that an interest was being taken in their issues, and understood the advocacy goal of the research: 'Through you our voice reaches the Government and the work starts as soon as possible.' (Wife of disappeared man, Kathmandu.) During interviews families were asked about human rights, with none outside the leadership of the family associations having any good idea what rights were:

Sometimes I think that when they took our people, they should not have killed them, they have the right to live. [...] It is treating them like beasts to kill them immediately after arrest. They treated our people like dogs. But I don't know exactly what rights are. (Focus group participant, Bardiya)

For the majority of those met in this study the fact that they have rights, to redress, to justice and to reparation, plays no part in the formulation of their demands in response to their victimhood.

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<sup>43</sup> These include *dalits*, the hill indigenous groups, *Tharu* from the plains and *Madeshis*, residents of the plains considered to more recent arrivals from India.

<sup>44</sup> Richard Bowd, *From Combatant to Civilian: The Social Reintegration of ex-combatants and the Implications for Social Capital and Reconciliation*, Unpublished PhD Thesis (York: PRDU, University of York, 2008)

<sup>45</sup> Robins, S. (2010), 'A participatory approach to ethnographic research with victims of gross human rights violations: Studying families of the disappeared in post-conflict Nepal', in ed. Ozerdem, A. and Bowd, R., *Participatory Research Methodologies in Development and Post Disaster/Conflict Reconstruction*, (London: Ashgate).

## Needs of wives of the disappeared

Needs of victim families are not static: as the understanding of the fate of loved ones has changed over the years of the conflict and as the peace process has developed, so needs have evolved. This study represents a 'snapshot' of those needs at a particular time. The needs of the families in general have been discussed elsewhere<sup>46</sup> and so here needs particular to wives of the disappeared are emphasised. The first question asked during the interviews was an open question about the family's priorities. Three types of response emerged far more frequently than others as needs:

- An answer about the fate of the disappeared, the truth: 'Is he dead or alive?';
- Economic support: 'compensation', or a demand for privileges regarding education, medical treatment and jobs for family members;
- Justice, in terms of the punishment of those responsible.

The needs expressed by men, or families represented by men, in interviews are compared with those expressed by wives in

Table 1.

Need	wives	men
Economic support	0.85	0.55
An answer regarding fate	0.61	0.65
Prosecution	0.15	0.51

**Table 1 Fraction of interviewees expressing particular needs; comparison of wives of the disappeared with male respondents.**

The needs expressed have distinct gender dependence: women prioritise the need for economic support while men prioritise such support, truth and prosecutions similarly. There were also dramatic differences in priorities between more politicised and educated urban families, and poor rural families, most notably concerning justice. For example, of families from rural Bardiya district, predominantly from the indigenous Tharu group, only 7 percent mentioned justice as a priority, while in the capital 69 percent did. On asking families if they would like to see someone punished, the vast majority said they would: thus this represents a hierarchy of relative priorities, rather than a set of alternatives.

## Economic needs

The families of the disappeared come from some of the poorest communities in Nepal: the landless, sharecroppers and marginal landowners who constitute 44% of the population.<sup>47</sup> The disappeared men have an average age of 33, with 76% aged between 18 and 40, an age where their economic contribution to the family is crucial. Where land or labour is the principal source of income, loss of the people who provide the labour for both reduces livelihood. The parents' generation will often be too old for agricultural work, while children are still at school; families have been deprived of breadwinners and women of husbands, often with young children to support. For a rural Nepali family with no land the only source of livelihood is precarious and highly seasonal daily labour.

<sup>46</sup> ICRC, *supra* n. 42 at 8.

<sup>47</sup> Deraniyagala, S. (2006), 'The political economy of civil conflict in Nepal', *Oxford Development Studies* 33 (2006) 1.

We don't earn in cash. We only earn in crops: eight kilograms of rice [per month] when I and my daughter go to work of which we trade four kilograms for other things like salt, oil, spices, fuel etc and we use the remaining four kilograms for our meals. (Wife of missing man, Siraha.)

As a result, many of the economic needs discussed here are the same as those of the poorest in Nepal, whatever the reason for their poverty. Women defined necessities as food, medical treatment and the education of children: all but three of the women met were unable to afford all of these; three-quarters were in debt. The most extreme cases are women heading households who have little capacity to earn a living: some had to beg to eat.

We have 1/2 katha<sup>48</sup> of land. This is the only way to support ourselves. I also do labour if there is the opportunity in the village. But that doesn't support us except for food. I can't manage to buy clothes or other things. I beg in the other houses sometimes because I can't manage everyday and I can't find work every day. (Wife of disappeared man, Bardiya.)

For the families of the Missing, the various means of livelihood are very often insufficient. The families met were evaluated as to the extent of their economic insecurity (Table 2).

<b>Economic insecurity</b>	<b>Fraction</b>
Not mentioned	0.12
Moderate: unable to afford some necessities	0.52
Serious: unable to afford many necessities	0.24
Extreme: reducing to begging for food	0.12

**Table 2 Summary of the economic status of wives of the disappeared.**

The spectrum of needs of families covers all aspects of livelihood. The minority of poorest families have problems feeding themselves: 24% of those met reported difficulties in finding sufficient food for the family. For most families the greatest sacrifices they have to make concern health care and education. Many families have seen their health decline as a direct result of their relative being missing, and yet this is accompanied by a financial inability to be able to afford health care. Health care can be cheap if local traditional healers are approached, whilst Western medicine will always be expensive. The result is that families must reduce their capital by selling land or see the sick go untreated. Education can be free in principle, but often has hidden costs. At the secondary level there are rarely schools close to rural communities and very often a child will have to live away from home to attend. One woman in Siraha decided it was better for her children to help with the animals than to send them to the Government school:

I have no money to send my children to boarding school since it may cost some five hundred rupees only for school fees besides uniform, stationery and other things, and as the teachers in the Government school don't come to school every day and don't teach the students well, so nobody wishes to send their children to Government schools. [...] Therefore, I think it's better to send the children to pasture for grazing the buffalo and goats than to send them to study in the Government school. None of the children is studying in school. [...] As I have nothing to educate them, everyone is working to maintain our livelihood. (Wife of disappeared man, Siraha, mother of four, aged 5 to 16)

<sup>48</sup> In Nepal, 1 katha = 130.2 m<sup>2</sup>.

Many victims of the Maoists have been displaced as a result of the loss of their relative and continuing threats to their security. This has typically resulted in the complete loss of livelihood through a lack of access to land: a group of victims in Rolpa displaced to the district headquarters are completely dependent upon daily labour to support their families. A husband would have worked to support the family throughout his life and this often underlies the demand for long-term support: the solution as far as wives are concerned is to give them a sustainable way to pay for the necessities of life. This could mean that the Government guarantees education and health care for families of the disappeared, or that family members are given jobs that guarantee an income that will permit them economic security for the future.

Whilst most rural Nepalis have little contact with the formal state, the issue of land is one where ownership documentation has become very important. Land and property constitute the most pressing administrative issues as a result of the uncertain and undocumented fate of their disappeared relatives, and were mentioned by 15 percent of women met:

We have no proof he is missing, which make it very difficult to use the property of our husband or father. The people whose family members are dead, they can register their name and use the property but the families of the missing can't register because the authority doesn't believe that they are missing. (Focus group participant, Bardiya.)

### **Need to know the fate of the disappeared and for human remains**

Knowing the fate of the disappeared was a priority, not least to end uncertainty. More than three-quarters of wives met demonstrated a degree of ambiguity about what had happened to their husband:

I haven't made any rituals. I still wear the symbols of marriage. I wear them because I haven't seen him dead: maybe he is alive somewhere. (Wife of disappeared man, Bardiya.)

For families of the disappeared, due to the lack of clarity over their fate, the death of their loved one is something almost impossible to admit to themselves. Only 6 of the 26 women met accept that their husband is dead; others maintain hope, even after many years that he will return. The time that has passed has reduced hope, but not extinguished it. In many wives the disappearance gave rise to repeated thoughts and dreams about the disappeared, disturbed sleep and sudden feelings of anxiety: two thirds of women met described such symptoms. This generalised anxiety disorder was the most common symptom encountered, together with expression of extreme pain, and appears to allow the problems facing most families to be discriminated from PTSD. Whereas PTSD is linked to a specific *event* of trauma, the anxiety expressed by families was about the disappeared person, rather than the event of disappearance: i.e. consistent with ambiguous loss<sup>49</sup>. Almost half of the women met talked of how their mental capacity has been impaired as a result of the disappearance; two families were met where wives of the disappeared had been disabled by mental illness, ascribed to the loss of their husbands. 29 percent complained of chronic physical symptoms that they ascribed to the disappearance, most often as a result of the constant tension and anxiety, and understood as somatic.

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<sup>49</sup> Pauline Boss, *Loss, trauma and resilience: Therapeutic work with ambiguous loss*, (New York: Norton, 2006); Simon Robins (in press), 'Ambiguous loss in a non-Western context: families of the disappeared in Nepal', *Family Relations*, in press.

There appears to be a primal need to see the bodies of the dead; the rituals around death break down its denial, permit grief and promote detachment.<sup>50</sup> The traditional treatment of the dead will vary between cultures in Nepal, with Hindus burning bodies and Buddhists, animists and Muslims burying them. Religious attitudes and ritual obligations after death shape views of the importance of human remains to families. Across the diverse religious traditions of Nepal there is however unanimity among families in their need to satisfy religious obligations: they need either the body or absolute evidence of death in order to complete rituals. A dilemma for the families of the disappeared is that without a body they have no proof and so the body is not only required for religious ritual, but *becomes* the proof of death. Especially for families that are illiterate a document cannot communicate something as important as the death of a relative: almost three-quarters of wives sought to retrieve the body of their husband. For many families the issue of closure is also an economic issue, with much money spent searching for missing husbands and expensive rituals required if death is confirmed. Families' distrust of the state extends to a lack of confidence in any remains that might be returned to them and they themselves propose two potential solutions to this problem. One is to trust tests, such as of DNA, that some families are aware of. The alternative is that a 'chain of truth' could be established that would link the arrest, often witnessed by the family, to the body in the ground that has been exhumed.

To perform the ritual we need something like his clothes, his bones or anything like that but I don't think it's possible. But they have to tell us the entire scenario how they killed our person, where they buried him and only then will the *lama* will be able to perform the ritual. (Wife of disappeared man, Kathmandu.)

This is not the same as judicial truth: families seek either human remains, or a detailed description of what happened to the disappeared.

### ***Impact in the home***

The traditional family is patrilocal, with wives moving to their husband's home on marriage. The joint family that is the building block of Nepali society can offer great support, economically and emotionally but can also become the greatest single stressor if individuals are alienated from it. In such a household there are power relationships, dominated by older men and with the younger wives at the bottom of the hierarchy, expected to be subservient to their mother-in-law. Young women are dependent for their status within the family on their husband, or on their children, notably boys. The greatest problems with families are thus seen when husbands of younger women are missing, whose status may be less well established: one third of wives reported that they had problems in the family and one in eight had extreme problems.

There is substantial stigma in a woman leaving the family home or remarrying, which is seen as a betrayal both of her in-laws' family and of her husband. In high caste culture that has become a model for many Nepalese, remarriage after the death of a husband is forbidden. As long as a woman remains ambiguous about her husband's fate she may not consider remarriage a possibility. In many cases where a woman has no children she will leave and remarry, escaping stigma but ensuring economic security through another man. As a result within the family the wife of a son who is missing will often be perceived as seeking an opportunity to leave, typically through elopement with another man. This often leads to the stigmatisation of wives of the disappeared:

My in-laws call me very bad things such as prostitute, witch, widow, etc in front of my children when they see me around. (Focus group participant, Katarniya, Bardiya.)

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<sup>50</sup> Pauline Boss, 'Ambiguous Loss: Working with families of the Missing', *Family Process*, 41 (2002):14–17.

Thus, a wife may be trapped within a family that resents her presence, but does not want her to leave due to the social stigma that would result. The family may perceive the wife as seeking to betray the family by running off with another man, and seek to constrain her movements to prevent this, or expel her from the home:

The family also sees the wife whose husband has been disappeared in a different way. In many cases, the family members suspect her in many ways. Even when she is busy searching for her husband she is accused of having gone for something else. [...] There are even some mothers-in-law who suspect that the daughter-in-law has other boyfriends. The mothers-in-law don't allow these daughters-in-law to enter the house. See the case of S.M., she has been denied food and expelled from her house. (Focus group participant, Kathmandu.)

In some cases the wife is blamed for the disappearance, for bringing bad luck to the family.

Economically, a woman may be perceived as bringing nothing to the family, but being another mouth to feed and a burden on the family. The net result of this web of obligation and resentment can be an environment of extreme difficulty for such women. Leaving the house is an option, but this would usually require a woman either to remarry or return to her maternal home, otherwise she would be without economic support. Often she would be expected to leave her children behind:

The relationship with my relatives and in-laws has been ruined. They see me as someone else's daughter, so I am an outsider and relations continue to get worse. They see the other sons [of the family] bringing money home and they see my children and me as just a financial drain: money is important to them. [...] Sometimes I feel like leaving the house, but because of the love I have for my children, I cannot go. (Wife of disappeared man, Dhading.)

One extreme example of the crisis of identity in the family that such women face was where a father-in-law sought to abuse her sexually and to take her as a second wife.

### ***Impact in the community***

The issues that lead to wives being stigmatised in the family also lead to problems in the community:

There are not good relations with community members. When I go to ask for something from anybody, others say there may be some illicit relations with me and therefore nobody comes to help me anymore because I am still young. (Wife of disappeared man, Siraha.)

In one community when the research team inquired about the whereabouts of two wives of the disappeared, the gentleman being asked described the two women as "whores", confirming the extent of stigmatisation in the village. Most Nepali cultures have a great respect for widows; the wives of the disappeared are stigmatised because they are women without men who do not adopt the identity of widows, in terms of removing the very visible symbols of marriage.<sup>51</sup> The ambiguity over a woman's marital status and her persistence in wearing the symbols of marriage permit a perception that the wives of the Missing are somehow predatory in their search for a new husband, particularly those that have left their husband's family. The vulnerability of being a single woman combined with the perceived reputation of the wives of the disappeared led to extreme problems in some cases, including sexual assault:

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<sup>51</sup> A married woman will wear vermillion *sindhur* powder in her hair, and bangles: these are removed and destroyed respectively on the death of a husband.

... drunks used to come at night and tried to scare, beat and rape me. Many times I had to run away with my crying babies. Many times I went to sleep in other's houses. (Wife of missing man, Bardiya.)

More than a quarter of wives said that they had problems in their community. One woman sees the solution to these problems as being a resolution of the ambiguity of their status, by the authorities giving a proper answer regarding their husbands:

We have been trying our best, but I think the state should solve these community problems. If the Government announces that our people are dead, we would make rituals and give up the symbols of marriage. At least the community would not have the problem of seeing us in married clothes and signs. And if my husband is alive they should publish his name so that also the community could be quiet. (Focus group participant, Gulariya, Bardiya.)

### **Justice and accountability**

When asked what justice meant to them, almost half of wives gave no answer. Those who did replied as follows:

- prosecution, 35 percent;
- compensation, 38 percent;
- truth / an answer, 23 percent;

Whilst some seek prosecutorial justice, many see justice in terms other than retribution, conflating it with their principle needs for truth and livelihood. Victims of both sides made the point that prosecuting lower level actors would not satisfy them; some emphasised that responsibility was political, and went to the very highest level, on both sides. There was a consensus that legal process should ideally be local, since that would give the victim families the greatest access to it; there was no interest in an international process. The Government's draft Truth and Reconciliation Commission Bill<sup>52</sup> included a broad amnesty for perpetrators, but a majority of women rejected this, linking it to their psychological needs:

The truth about the facts should be clarified, but the perpetrators should not be given amnesty. If they are given amnesty, the mentality of the victim families will remain as it is, so amnesty should not be given. (Wife of disappeared man, Siraha)

### **Reparation and acknowledgement**

Families expressed the view that the most reparative act of the authorities is to reveal the truth about the disappeared. Whilst a minority refused to countenance compensation, this was the term most used when discussing economic support. There is a concern among families that payments of compensation are somehow designed to distract families from pursuing the truth about their loved ones. For all families there is a dilemma between the need to feed themselves now, the need to know the truth before any compensation or reparations can be accepted and the very idea of putting a value on the life of the disappeared by accepting money from the authorities:

Compensation is the thing when you destroy someone's property and give some money to cover the loss; but how you can cover the loss of our husbands, a person? It's not possible at all. (Wife of disappeared man, Kathmandu.)

A number of women resolved this dichotomy through the concept of *relief*.

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<sup>52</sup> Government of Nepal, *Draft Bill for the establishment of a Truth and Reconciliation Commission*, (Kathmandu: Govt. Of Nepal: Ministry of Peace and Reconstruction, 2008).

If they give us 1 lakh [100,000] Rupees as *relief* then I will take it, if they say it is *compensation* then there is no way I am taking it. (Wife of disappeared man, Dhading.)

In this way families can address their immediate needs, without sending a message to the authorities that they believe the issue of the disappearance is closed.

Families, particularly those that are politically engaged, have a burning desire to see the sacrifice of their loved ones officially *acknowledged*. Unofficial efforts to memorialise the disappeared are under way, demonstrating the enthusiasm of communities to see such acknowledgement. The wives met during this study mentioned their need for memorials to the disappeared, most seeking a local memorial.

An essential component of reparation is satisfaction, notably giving families assurances of non-repetition of the offence.<sup>53</sup> Eight out of ten wives of those taken by the state believe they will never be able to trust the state, while none of those whose husbands were taken by the Maoists believe trust can be rebuilt. If the issue of disappearances is not addressed, a majority of the victims of the state say they would react: half would take part in a political movement, while a significant minority (15 percent) say they would be prepared to launch a rebellion with the use of arms:

If the Government will do the job, but will take time then we are ready to wait but if the Party betrays us then we will not hesitate to take up guns against our own party. (Wife of disappeared man, Kathmandu.)

Given that many of these families are cadres of the Maoist party, the implications for the future of the peace process of ignoring the needs of such victims should not be underestimated.

## **Analysis and implications of the study**

### **Victims' agendas for transition**

The needs of wives of the disappeared in Nepal are dominated by a need for the truth about the fate of loved ones and access to human remains where they are dead, and economic support to ensure livelihood. They also face often extreme social problems as an impact of disappearance in traditional communities. The issues in family and community and the relatively low priority women give to judicial process conflict with dominant narratives around transitional justice, in Nepal and elsewhere. Many of the needs discussed, and indeed the general impact of disappearance, emerge from the unique social, economic and cultural position of affected families, indicating that approaches that do not consider the context in which victims live will be unlikely to meet their needs.

Transitional justice process in Nepal, like the transition itself, is blocked as the parties who fought the conflict clash over the future shape of the state in the deadlocked provisional legislature. Whilst draft bills on both a Truth and Reconciliation Commission (TRC) and a Disappearance Commission have been published, no progress toward the creation of these bodies has been made. The only measure to address disappearances has been a payment of Rs. 100,000 (\$1,360) made to some of the affected families. Political actors on all sides as well as the armed forces remain reluctant to see any process that might lead to judicial proceedings. The human rights community in Nepal has exacerbated the fears of those in

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<sup>53</sup> Paul de Grief, 'Justice and reparations', in *The handbook of reparations*, ed. Paul de Grief (Oxford: OUP, 2008), 452.

power of any transitional process by emphasising an agenda for transition in which primacy is given to the need for prosecutions and all other goals of transition, notably the social and the economic, made subservient.

Not knowing the fate of missing husbands has left many women suffering significant emotional and psychological problems, including sleep disturbance, somatism and generalised anxiety disorder. The most extreme impacts however are *social* in nature, where wives of the disappeared have experienced loss of status within the family and where identity issues in the community result in stigmatisation. The positive role that family associations have played in supporting those affected by disappearance, suggests that solidarity and sharing is a crucial coping mechanism. Those who have coped least well have become fixated with the ambiguity of their loss and with seeking closure: this strongly suggests that human rights led interventions with families of the disappeared that emphasise truth and justice over all other aspects can be potentially damaging by reinforcing such negative coping. Interventions should aim to help families to live well despite ambiguity. Beyond their own organisations and communities, victims have little or no access to medical facilities or other psychosocial support. Many of the impacts of ambiguity, such as being unable to perform the expected rituals for the dead, demand not only that families receive an answer concerning the fate, but also that they have access to human remains. This demands a comprehensive process of investigation, exhumation and identification.

The addressing of the psychosocial issues wives of the disappeared face are linked to the more general empowerment of women. Women's livelihood challenges and their status in the home and community are linked to traditional patriarchal structures. As such, the mobilisation of victims around such agendas can serve not just to address the direct issues of the conflict but also to aid in the transformation of the state that the transition promises. Changing behaviour and attitudes in communities will also demand action at the local level, to increase understanding of the challenges that the conflict affected face and to advocate with local leaders to address stigmatisation.

### **Addressing the economic issues of victims**

It is unsurprising that economic needs are emphasised in this study, given the profile of many victims as the poorest and most marginalised. The restitutive orientation of transitional justice suggests a return to a *status quo ante* that for many in Nepal represents both a continuation of poverty and oppression, and a recipe for renewed conflict. Those communities most impacted by the conflict were also those most socially excluded and addressing their communities' needs ultimately means ensuring inclusion and economic development.<sup>54</sup>

The wives of the disappeared are excluded from participating in much of economic, social and political life as a result not only of their gender, but also due to their ethnicity and class. Whilst the loss of men folk has sharpened economic distress it is the structural violence<sup>55</sup> of economic and social relations that is responsible for the breadth of economic challenges that their communities face. Transitional justice seeks to focus on individual acts of violence, looking for victims and perpetrators, rather than seeking to address the systemic violence of the feudal social relations that led to Nepal's conflict. Such horizontal inequality has not been a target of transitional justice, even though it is most clearly an issue of injustice and not simply of economic development. Both the theory and practice of transitional justice privilege civil and political rights over the social, economic and cultural, reflecting a bias in the

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<sup>54</sup> D.R. Panday, *Nepal's failed development: Reflections on the mission and the maladies*, (Kathmandu: Nepal South Asia Study Centre, 1999).

<sup>55</sup> Johan Galtung, 'Violence, peace, and peace research', *Journal of Peace Research*, 6 (3), 1969: 167-91,

normative corpus of human rights.<sup>56</sup> Whilst the connections between transitional justice and development are beginning to be explored,<sup>57</sup> such analysis has yet to impact significantly on transitional processes. Development is not simply a case of ensuring economic growth, but of ‘enlarging people’s choices’<sup>58</sup> and a crucial part of that is distributing the limited resources of a state such as Nepal more equitably than they are currently. The rhetoric of the transition has put an end to social exclusion centre-stage in the transformation to the ‘new Nepal’, targeting women, the indigenous and lower castes.<sup>59</sup> More than three years since the end of conflict however this remains mere rhetoric, with little concrete progress made. Whilst transitional justice mechanisms may choose to not engage directly with developmental issues they can ensure that the subservience of social and economic rights in the transitional justice discourse is ended, and that the implications for future conflict of perpetuating inequality are understood. More than this, transitional justice can be development sensitive in how it approaches issues linked to inequality.<sup>60</sup>

Reparation has traditionally been the only area of transitional justice which has economic implications. The women met for this study seek not a simple payment of compensation, but livelihood guarantees that will allow them to feed and educate their families in the long-term. In this sense, reparation can serve a much larger agenda than merely acknowledging affected families, by challenging gender inequalities:

“When reparations are thought of as part of a political project of (re)creating a more legitimate, democratic and inclusive political order, rather than of reverting to a broken past, they open a window of opportunity – even if small – for women to endorse forms of reparations that depart from settled practices and norms that are so frequently part of pre-existing gender hierarchies.”<sup>61</sup>

Whereas traditionally all reparations have targeted the head of household, a victim-centred transitional justice can challenge the assumption of congruent interests among all family members. Payments can be made to the wives of the disappeared, and to ensure that money is not taken from them by family members it can be paid as a regular pension that would serve to raise their status in the household and reduce stigmatisation. Seeing a role for reparations as a tool for building inclusivity naturally leads to developmental questions about using them to address other forms of exclusion. The melding of reparations and development assistance have been dismissed by some as confusing the message that reparations serve as restitution for violations, while all citizens have a right to seeing their basic needs met.<sup>62</sup> Such thinking however fails to recognise the reality that in many low income transitional contexts states, including Nepal, are simply unable to meet their obligations. More than this, those living in extreme poverty are generally victims of the inequalities and structural violence that gave rise to conflict, if not of the direct violence that

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<sup>56</sup> Balakrishnan Rajagopal, *International law from below: development, social movements, and Third World resistance*, (Cambridge: CUP, 2003).

<sup>57</sup> See, for example: Rama Mani, ‘Editorial: Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development’, *The International Journal of Transitional Justice*, Vol. 2, 2008, 253–265.

<sup>58</sup> United Nations Development Programme (UNDP), *Human Development Report* (New York: UNDP, 1990), 10.

<sup>59</sup> The interim constitution includes commitments to equality, positive discrimination and “protection, empowerment or advancement” of women and others from marginalised groups: Government of Nepal, *Interim Constitution of Nepal*, (Kathmandu: Government of Nepal, 2007).

<sup>60</sup> Roger Duthie, ‘Toward a Development-sensitive approach to Transitional Justice’, *The International Journal of Transitional Justice*, Vol. 2, 2008, 292–309.

<sup>61</sup> Ruth Rubio-Marin and Pablo de Greiff, ‘Women and Reparations,’ *International Journal of Transitional Justice* 1(3) (2007): 325.

<sup>62</sup> e.g. OHCHR, Duthie, note 25

is privileged by the rights discourse.<sup>63</sup> In this study we see that victims in practice do not care if the assistance is called 'reparation', 'development assistance' or 'social assistance', their priority is to see children fed and educated and they understand that the state can do this as rectification for both the impact of the conflict and a history of exclusion, on the basis of need. Donors should be encouraged to provide such support on the same basis they do development aid. Community reparations are feasible in those many cases where ethnicity or caste has led to exclusion, and particularly for women from marginalised communities, to support them and their organisations. Collective reparations in the form of livelihood programmes can target women in conflict affected communities, enhancing family incomes as well as serving to empower women in families and communities.

Poverty in rural areas arises from many families owning little or no land. Indeed, one of the major causes of conflict in some districts has been the systematic theft of land from the indigenous by high castes with connections to the organs of the state.<sup>64</sup> Only a programme of systematic land reform can resolve this issue. This is considered by many to be beyond the remit of transitional justice, but it remains inextricably linked to addressing the causes of conflict and of building peace. The mechanisms of transitional justice can however serve to support such reform, as well as creating an understanding of the broader impact of exclusion. Truth Commissions have traditionally restricted their remit to the narrow scope of violations committed. Some however, such as Timor-Leste's Commission for Welcome, Truth and Reconciliation, have explicitly probed the nature of social and economic violations noting that many more died from hunger and disease during the conflict than were killed by armed action.<sup>65</sup> In Nepal, the proposed Truth and Reconciliation Commission could seek to understand the social and economic roots of the insurgency, so as to better define the agenda of the recovery. Such an approach, acting as a 'diagnostic tool'<sup>66</sup> will allow a history of exclusion to be written that can catalyse processes to address it.

Perhaps the greatest legacy that ongoing transitions have to overcome is that of the neoliberal philosophy of recent transitional justice processes. Derived from a 'Washington consensus' that is increasingly seen to have failed developing nations, it led to a transitional justice that sought to deny that the economic was in any way connected to justice. This in fact represented an effort to impose a certain politics on post-transition states. What Nepal most needs to consolidate its fragile peace is a transformative politics that confronts its history of inequality and actively addresses it:

"...even if economic growth is necessary, it is not sufficient to reduce poverty and inequalities, and thus to prevent conflicts. Rather, something more needs to happen, such as well-planned and executed redistributive policies that ensure a state meets the basic needs of all its citizens."<sup>67</sup>

### **Towards a transitional justice sensitive to the needs of women**

This empirical study suggests that neither the contemporary theory nor practice of transitional justice addresses the full range of needs of wives of the disappeared in Nepal. A

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<sup>63</sup> Robins, *supra* n. 16 at 4.

<sup>64</sup> *Ibid.*

<sup>65</sup> CAVR (Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste), 'Chegal! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor', (Dili: CAVR, 2005).

<sup>66</sup> Mani has proposed that Social Justice Commissions could extend the role of Truth Commissions explicitly into the social and economic: Rama Mani, 'Looking Back and Moving Forward: The Nexus between Development and Transitional Justice', Expert Paper presented at: Building a Future on Peace and Justice, Nuremberg, 25 – 27 June 2007 Workshop 3.

<sup>67</sup> Lisa J. Laplante, 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework', *The International Journal of Transitional Justice*, Vol. 2, 2008: 343.

legalistic transitional justice discourse, as articulated in Nepal, gives primacy to judicial and institutional process and fails to coincide with victims' priorities. The wives of the disappeared in Nepal have needs which cannot be addressed through such mechanisms. There is, moreover, no route by which victims can impact on Nepal's transitional process: it remains subject to the agendas of elites in both government and civil society. The marginalised in general and women in particular have no agency in the process. Whilst this study has focussed on a small sample of victims of a particular violation, it is likely that its conclusions are relevant for many of the rural poor who form the bulk of the conflict-affected and in particular for women. A focus is needed on how transitional justice debates can advance the material cause of women in transitional contexts, rather than trying to 'fix' prescriptive transitional justice frameworks.<sup>68</sup>

Justice projects have been described as being committed either to redistribution or recognition.<sup>69</sup> Recognition drives the current global transitional justice project, with an emphasis given to institutions such as courts and truth commissions that can recognise violations and define victims and perpetrators. A redistributive approach must be prioritised if the needs expressed by the wives of the disappeared in Nepal are to be addressed; redistribution not just of resources such as money and land, but of power, from unrepresentative elites to the mass of the Nepali people and from male hierarchies to all members of society.

This study has shown that for the wives of the disappeared in Nepal impacts occur not just in the 'public sphere', but in the 'private sphere' of family and community. Structural violence against women is exacerbated as a direct result of violations committed against a man through whom a woman's relationship to the family is defined. The wives of the disappeared see their status reduced as a result of the ambiguity of their identity that fails to coincide with social expectations; they are neither wives nor widows, but uncertainly defined. The discourse of transitional justice has always restricted itself to the public sphere, allowing the pursuit of redress and equality at an institutional level to blind it to inequality and marginalisation arising from social practice.<sup>70</sup> As a result, transitional justice promises little to those women in Nepal who see the greatest impact of violations in the primary institutions of family and community. Gender is always enmeshed in a nexus of discursive practices, including the legal, political and social. Transitional justice, with its roots in law, has always preferentially sought to address the legal while acknowledging the political discourse around its practice. The social remains however an area where transitional justice appears to fear to tread. This distinction resonates with feminist discourse that has long seen the distinction between the public and the private as serving to depoliticise the domestic space:<sup>71</sup> in transitional justice discourse the home is not a site for the assertion of rights.

More generally, the transitional agenda continues to marginalise social, economic and cultural rights in favour of the civil and political. The conflict in Nepal arose as a result of deep inequalities around class, caste, gender and ethnicity. Addressing these demands a broad view of transition that encompasses fundamentally changing the basis of social relations in Nepal; the agendas of transitional justice, development and social inclusion

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<sup>68</sup> This argument is made in: Christine Bell and Catherine O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay', *The International Journal of Transitional Justice*, Vol. 1, 2007, 23–44.

<sup>69</sup> Nancy Fraser, *Justice interruptus: critical reflections on the "postsocialist" condition*, (New York: Routledge, 1997).

<sup>70</sup> Vasuki Nesiiah, 'Discussion lines on gender and transitional justice: An introductory essay reflecting on the ICTJ Bellagio workshop on gender and transitional justice', *Columbia Journal of Gender and Law* 15(2002) 3: 799-812.

<sup>71</sup> Wenona Giles and Jennifer Hyndman, 'Introduction: Gender and Conflict in a Global Context', in ed. Wenona Giles and Jennifer Hyndman, *Sites of Violence: Gender and Conflict Zones*, (Berkeley: University of California Press, 2004).

intersect.<sup>72</sup> The traditional political parties and human rights agencies, both led by elites who have benefitted from the social stratification of the past, show no willingness to engage with these broader issues. Legalists advocating a transitional justice agenda restricted to civil and political rights emphasise the judicial, shrinking the emancipatory possibilities of the rights discourse. The “bounded change”<sup>73</sup> that transitional justice promises often appears to put limits on the extent to which society can be transformed and social relations that led to conflict challenged. In this sense the discourse is inherently conservative, and will struggle to serve the disempowered.

In Nepal, the lack of substantial consultation has led to women generally, and women from excluded communities in particular, having little input into the shape of transition. More than this, the rights community has failed to articulate the agendas of the disempowered or to mobilise victims.<sup>74</sup> For transitional justice to address the consequences of conflict, empirical studies of the type made here are required to ensure that transitional process is ‘evidence based’<sup>75</sup> and can allow the goals of victims and others to emerge. They are however a poor substitute for a process of mobilisation that permits the marginalised to engage with the creation of transitional process and enable their agency. One of the most well known instances of victims doing this was the action of the Madres de Plaza de Mayo in Argentina, a group of women, primarily mothers of the disappeared, who decided to make their pain and their needs public and political. They did this by moving their suffering from the private space of their homes to the very public space of the Plaza de Mayo, and ultimately had a significant impact on policy towards disappearance. This study demonstrates that such activism by women victims not only can effect change and challenge elite control of the transitional agenda but is in itself positive in psychosocial terms for victims.

The highly contextual demands of transition made by victims demonstrate that imported and prescriptive approaches not only do not address their needs, but fail to even identify them. A victim-centred approach permits transitional process that is steered by the needs of affected communities rather than priorities that come from elites. The utility of this study and the methodology used here is in allowing mechanisms of transitional justice to be developed, and potentially evaluated, in the light of the needs of victims. As such, the imperative for those who seek to speak for victims is to consult with victims, support their mobilisation and ensure that the practice of human rights is inclusive. The challenge for those tasked with creating mechanisms to address the needs of both victims and the broader society arising from Nepal’s conflict, is to ensure that in a society that has never listened to the most marginalised, a way can be found of ensuring the agency of victims in the transitional process.

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<sup>72</sup> Bishnu Raj Upreti, ‘Social exclusion and conflict’, in *The inclusive state: Reflections on reinventing Nepal*, ed. Anand Aditya (Kathmandu: SAP-Nepal, 2007).

<sup>73</sup> Rudi Teitel, *Transitional justice*, (Oxford: Oxford University Press, 2002), 229.

<sup>74</sup> Robins, *supra* n. 16 at 4.

<sup>75</sup> Pham and Vinck, *supra* n. 25 at 6.