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Abstract
Despite many transitional justice processes claiming to be ‘victim-centred,’ in practice they are rarely driven by the needs of those most affected by conflict. Indeed, in many contexts the views of victims are not sought by those driving the transition. In this article, the needs of a representative sample of 160 families of people disappeared during Nepal’s decade-long Maoist insurgency are studied in an effort to understand what such families seek from the transitional justice process. The study shows that victims emphasize the need for the truth about the disappeared and for economic support to help meet basic needs. Whilst families of the disappeared would welcome justice, this is not their priority. Nepal’s transitional justice process remains still-born and discussions are polarized between a human rights community that prioritizes prosecutions and a political class that seeks to avoid them. An understanding of victims’ expectations of the process can potentially break this deadlock and allow policies to be driven by the needs of those most affected.

Victims’ Needs and Transitional Justice
The discourse of transitional justice has emerged as a response to the needs of societies emerging from conflict or political violence and has become a common lens through which to examine democratizing states. Typically, it describes institutional responses to violations of international humanitarian law, international human rights law or domestic law that occurred during a previous regime. Approaches that emphasize institutions have 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.2

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Despite a widespread understanding that it is the poor and disempowered who constitute the majority of victims of conflict, a sustained engagement with such constituencies has not been part of the mainstream practice of transitional justice. Transitional justice processes and the mechanisms through which they work tend to be top-down. They are created by elites – often those involved in the conflict that preceded the transition – and supported by an international community remote from the context and from indigenous understandings of the conflict. In many cases processes of consultation with victims and communities are cursory. Some literature is now emerging to challenge this deficit, but there remains a dearth of praxis that interrogates the idea of 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 they occupy. To root a response to gross violations in the experience of those most affected demands an empirical and an ethnographic approach. 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 often holds the key to recovery from such extreme events. This article summarizes an empirical study of the needs of a particular set of victims: the families of people disappeared during Nepal’s decade-long Maoist insurgency. It aims to allow a deeper understanding of the impact of disappearance on communities, families and individuals through the use of qualitative research methods, and considers the implications for transitional justice processes in Nepal.

The article begins by defining a victim-centred approach and reviewing existing theory and practice from this perspective, with an emphasis on efforts to understand victim agendas in transition. The literature addressing the violation of disappearance is then briefly discussed, before a review is offered of the context of Nepal in terms of the conflict, the country’s ongoing transition and its approaches to the issue of disappearances. The participatory ethnographic methodology of the study is discussed and the findings summarized in terms of the needs identified by families of the disappeared. These needs are analysed in light of existing theory and practice.
of the ongoing transition, and the implications reviewed for policy in Nepal and for transitional justice approaches more broadly.

**Victim-Centred Approaches**

In many postconflict interventions, both the individual and the collective consequences of violations remain largely unexamined. Indeed, much of the transitional justice literature is by experts speaking for victims:

A grave disservice is done to victims by those who seek to speak on their behalf, whether in the name of justice or reconciliation. By so doing . . . they render the victims silent. Generalised and conveniently summarised victims’ expectations tend to denigrate the complex and inconsistent human identity of such victims and survivors, ignoring the extent to which needs vary from victim to victim and change across time. Presumptions that victims need or demand punitive justice are no more reliable than are the claims that victims are willing to forgive perpetrators who confess, or that they merely seek acknowledgement and symbolic reparations. 8

The term ‘victim-centred’ has been used to describe many transitional justice processes, most often in an attempt to suggest that the processes place the victim at their centre, in reference to one of the principles of restorative justice. 9 In this article, the term is used to define a transitional justice process or mechanism that arises as a response to the explicit needs of victims, as defined by victims themselves. This does not imply that all goals of the process are made subservient to the agenda of victims, but that ‘an awareness of the centrality of victims/survivors and their needs to the whole process’ drives it. 10 External constraints must be accommodated by any transitional justice process, and there will be legitimate goals at a national level that may or may not coincide with those of victims. Here, a victim-centred approach is conceived as advancing specific ways of enhancing the quality of transitional justice processes. It challenges external and prescriptive approaches, counters elite control of the transitional justice agenda and optimizes the addressing of victims’ needs. For these needs to be considered, a victim-centred approach requires either broad consultation with victims or for victims and their representatives to be engaged at all levels of planning and implementation. The effectiveness of a victim-centred transitional justice process can then be measured in terms of its ability to address victims’ needs.

Rights are by definition universal and make moral and legal claim to entitlements, whilst needs are a product of culture and context and are highly local in nature. Needs are taken as the focus of the study described here for several reasons. First, in the context of Nepal, most victims know little of rights and instead articulate needs. The language of rights is alien to many, and victims’ daily

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experience confronts them with unmet needs, very often the most basic. Thus, seeking victims’ agency in the process necessitates using language they understand. Second, whilst rights are universal, the practice of human rights remains far from it, having to compete with local political and other imperatives. The privileging of an external discourse can empower elites and outsiders at the expense of victims, particularly the most disempowered, who have both the greatest needs and the least access to the language of rights.11 Third, whilst the rights discourse claims to address all rights equally, in practice civil and political rights are prioritized over others, notably social, economic and cultural rights.12 Perhaps most important, the result of ignoring the needs of victims can be the perpetuation of the cycle of conflict, which in some contexts is driven by attempts to address perceived grievances that arise from previous violence.13 One implication of the practice of privileging victims’ needs over more abstract notions of rights is that victims must be engaged by transitional justice processes. Local visions of the future or local meanings of justice must inform the process. Needs are seen as a natural articulation by victims of what they require to be satisfied, whilst rights are a powerful way to attempt to address those needs.

Understanding Victims’ Agendas

The roots in law of the human rights discourse lead human rights practice in conflict and postconflict environments to highlight the collection of testimony and investigation of the facts of violations, prioritizing outcome over a process of engagement with victims.14 Disappearance gives rise to a need for truth and justice, but the range of needs of victims’ families goes far beyond this. Studies have been made of the general impact of war on civilians and of its impact specifically on families of the disappeared. These studies are dominated by approaches that privilege investigations of the psychological sequelae of trauma, and in particular posttraumatic stress disorder (PTSD).15

15 See, for example, Gregory J. Quirk and Leonel Casco, ‘Stress Disorders of Families of the Disappeared: A Controlled Study in Honduras,’ Social Science and Medicine 39(12) (2004): 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...
Such approaches have been critiqued both for ignoring indigenous understandings and on the basis that the impact of disappearance is very different from that of a single traumatizing event, being of a chronic nature that has emotional, psychological, economic and social consequences. The net impact on families and individuals of having a missing relative is the sum of these effects, subject to the resources of individuals and communities to cope. Ambiguous loss is an explicitly relational perspective that characterizes the stress of disappearance as external and ongoing. It has been applied to families of soldiers missing in action and to victims of the 9/11 attacks on New York whose bodies were never found. The issues of missing persons and human remains necessarily engage with context-specific emotional, psychological and spiritual constructs and as such demand an engagement with culture to create a process that is steered by needs that are highly local.

A recent development has been the use of social science research methods to determine the attitudes of populations of states in transition so as to make transitional justice processes responsive to the perceptions and needs of those most affected. This approach, pioneered by the Human Rights Center at the University of California, Berkeley, uses a mix of qualitative and quantitative methods with the ambition of delivering ‘evidence-based transitional justice.’ It has been used in several contexts, including the former Yugoslavia, Iraq, Rwanda and northern Uganda. 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 rather focused on a range of agendas defined by the researchers and those funding the studies. A more recent Human Rights Center study conducted in the east of the Democratic Republic of Congo used both quantitative and qualitative approaches with the specific remit to ‘understand the priorities and needs of Congolese civilians affected by the conflicts.’ In Nepal, one empirical study has been made that explicitly targeted victims of the conflict, but its methodologies have been criticized for reflecting an external agenda of retributive justice and for emphasizing civil and political rights over victims’ priorities in terms of basic needs.

Addressing Disappearances in Transition

Disappearance is the violation that has most driven the development of transitional justice as distinct from a simple prosecutorial approach to violent pasts. The early Latin American truth commissions, notably those in Argentina and Chile, focused on establishing the truth about those who had disappeared under authoritarian regimes and gave rise to the concept of ‘truth recovery’ as a goal of transitional justice. Such commissions saw their goal as seeking a ‘historical truth,’ however, which in practice meant demonstrating the fact and scale of disappearances and creating the political space in which other mechanisms, notably exhumation processes, could give families the ‘private truth’ they sought. The South African Truth and Reconciliation Commission continued this trend, revealing, amongst other truths, the extent of enforced disappearance under the apartheid regime and allowing a mechanism to be created that could pursue the technical work of exhumation and identification required to give families answers.

A tension has long existed between the needs of families of the disappeared for truth and a human rights discourse that emphasizes a broader societal need to end impunity. Alternative approaches to giving victims’ families the truth about the disappeared decoupled from judicial processes are being used in several contexts, notably Cyprus and the Balkans, involving the confidential exchange of information about the fate and location of the remains of the disappeared. Regardless of

27 These processes remain largely undocumented, at least in the academic literature. They include the Committee on Missing Persons in Cyprus, http://www.cmp-cyprus.org (accessed 15 November 2010), the Bosnian Working Group on Persons Unaccounted for Following the Conflict,
whether information emerges as part of a judicial process or otherwise, resources and technical expertise are required for exhumations that give families answers and permit the return of remains. In both Europe and Latin America such processes are widespread, whilst in Asia, despite the region being responsible for a greater number of disappearances than any other in recent years, such processes remain limited.28

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, economic and political exclusion that marginalized indigenous people, lower castes and women. Excluded groups face higher mortality rates, as well as literacy and incomes that are far below the nation’s meagre average. The vast majority of Nepal’s almost 30 million people live in rural areas, where feudal social relations impact upon livelihoods, with a significant percentage of the rural population landless and working as sharecroppers for landlords. Almost one-third of the population lives on less than a dollar a day.29 The first democratic elections were held in 1991, following a popularly supported but elite-led ‘People’s Movement.’ Whilst the changes brought about by democracy helped trigger the conflict, its roots lie in the country’s persistent economic and social inequalities. In 1996, the Communist Party of Nepal (Maoist) (CPN-M), a small party from among Nepal’s fractious Marxist Left, declared a ‘People’s War’ against the new democratic regime. The insurgency grew rapidly from its initial base in the hills of the impoverished Mid-Western region, with the Maoists soon 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 historically marginalized groups.30

Whilst disappearances occurred from the start of the conflict, and even before it, the introduction of the Royal Nepal Army (RNA) into the escalating conflict in 2001 dramatically increased human rights violations of all kinds.31 Between 2000 and 2003, Nepal was responsible for a greater number of cases of disappearance reported to the UN’s Working Group on Enforced or Involuntary Disappearances


than any other state, demonstrating disappearance as the defining violation of the conflict. The conflict came to an end in April 2006, with a second ‘People’s Movement’ that united 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 and more than 1,200 unaccounted for.

Whilst disappearances were perpetrated by the Maoists, the vast majority were the responsibility of state forces, apparently as a deliberate strategy of war on the part of military commanders at several levels in the hierarchy. One motivation was the elimination of those perceived to be part of the Maoist threat. In rural areas, disappearances were encouraged by additional dynamics linked to the traditional power structures of caste, class and ethnicity that were the underlying cause of the conflict. For example, in Bardiya, the district worst affected by disappearances, 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 over much agricultural land in 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 as being loyal to the insurgency. In Nepal, as in other conflict contexts, a number of international and national agencies have made detailed investigations into violations committed by both sides during the conflict. These, however, make little reference to the needs of victims’ families; the analyses are perpetrator- and violation-centred, rather than victim-centred.

Families close to the CPN-M first established an association of families of the disappeared in Kathmandu during the conflict, bringing together families to demand that the state inform them of the whereabouts of relatives. Soon after

32 Human Rights Watch, Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal’s Civil War (October 2004).
33 INSEC, supra n 31; International Committee of the Red Cross (ICRC), Missing Persons in Nepal: The Right to Know (2008).
34 According to international human rights law definitions, only forces linked to a state can perpetrate disappearance (although states are obliged to investigate those perpetrated by nonstate actors). Here, the term ‘disappearance’ will also include cases of abduction perpetrated by nonstate parties to the conflict in Nepal, notably the CPN-M.
35 In this district, 240 are recorded as missing. ICRC, supra n 33.
the end of the conflict, family associations were established in other parts of the country, organized 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, advocating for truth and justice from the authorities and providing a valuable mechanism of solidarity and support. They have had a sometimes problematic relationship with human rights agencies and have had little success in gaining donor support.37 The Nepali authorities have largely declined to engage with the family associations.

Study Methodology

The research methodology for this study is intended to allow the voices of victims to contribute to the debate about dealing with the past. The research design and conceptualization process was executed in a participatory way with family associations, which determined research goals and the methodology.38 It was decided that the research would be ethnographic and rooted in an advocacy effort, and that the family would be the unit of analysis. Families wanted their needs to be communicated; and the final research report allowed the dissemination of the results as a tool of advocacy.39 Whilst the methodology presented here does not replace victim mobilization, it does allow for a process that engages victims and their organizations in a way that not only allows their voices to be heard and identifies local resources, but also gives those organizations a concrete advocacy tool to increase their effectiveness. The study emphasized the goals of transitional justice, rather than specific mechanisms, motivated by the lack of knowledge of potential mechanisms by victims.

Different perceived needs exist in rural and urban as well as rich and poor families, and between families with significant contact with human rights agencies and those without.40 This heterogeneity demands a methodology that delivers a representative sample. The sampling frame used for the study is a list drawn up by the International Committee of the Red Cross (ICRC) of 1,227 persons missing as a result of the conflict41 compiled during ICRC’s presence in Nepal since 1998 through visits to rural 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

37 Robins, supra n 11.
39 This was published by the ICRC in English and Nepali. International Committee of the Red Cross (ICRC), Families of Missing Persons in Nepal: A Study of Their Needs (2009).
40 Whilst this is an assumption made when developing the sampling strategy, it is also clearly demonstrated in the data.
41 ICRC, supra n 33.
by region, geography, ethnicity and alleged perpetrator (state, Maoist). These 10 districts account for 43 percent of those on the ICRC list. Within each district, a random selection was made, and families were visited in their homes. Eighty-six families were interviewed, the vast majority with the family as a unit. Wives of the disappeared were met alone or in peer groups so as to understand potentially problematic dynamics within the family, where stigma and disempowerment can impact on women whose husbands are missing.

Interviews were conducted by the author with the support of a research assistant from the relevant community and, in most cases, in the presence of a representative of the local family association. Interviews typically lasted 90 minutes and were semi-structured, based on a seven-page script that had been developed in conjunction with family associations over a two-month period prior to the research. Families were invited to prioritize their needs relating to their disappeared relative through a series of open-ended 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. These included groups of wives of the disappeared, members of particular ethnic groups and groups defined by the perpetrator of disappearance (See Tables 1 and 2). The research was conducted in 2008 over a six-month period, two years after the end of the conflict. The disappearances discussed here took place between two and 12 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 group discussions were recorded and then translated and transcribed. These texts were iteratively coded for analysis by both frequency of topic data and for selection of relevant text segments.

The author’s collaboration with family associations served to build trust between him and the research participants and to ensure that respondents were able to talk frankly and openly. The easily understood advocacy aim of the research ensured an ethical relationship between the researcher and the researched and eased issues around informed consent. 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.

42 Nepal’s plains contain the bulk of the Madhesi population, persons of Indian origin assumed to be more recent migrants to Nepal, as well as indigenous groups, such as the Tharu. Hill populations are a mix of caste Hindus and indigenous groups. Districts were selected to ensure that urban areas were included, notably Kathmandu, and that rural victims were appropriately represented. The thinly populated mountains were far less affected by the conflict and were excluded from this study.

43 The 10 districts visited are Banke, Bardiya, Bhaktapur, Dhading, Dhanusa, Gorkha, Kathmandu, Lalitpur, Rolpa and Siraha.

44 Robins, supra n 38.
The response of families to the study varied. Some were angry that many human rights 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.

 Needs of Families of the Disappeared

The needs of victims’ families are not static. As families’ understanding of the fate of loved ones has changed over the years of the conflict and as the peace process has developed, so have needs evolved. This study represents a ‘snapshot’ of those needs at a particular time. During interviews, families were asked about human rights, with very few outside the leadership of the family associations having any good idea as to what rights are. The sister-in-law of a man disappeared by the state in Rolpa noted, ‘We hear people on the radio talking about these things. But nobody has come and told us about our rights. We don’t have any concept of human rights.’

Table 1. Ethnic and Caste Profile of Families Interviewed

<table>
<thead>
<tr>
<th>Ethnic/caste group</th>
<th>Families interviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brahmin/Chhetri</td>
<td>21</td>
</tr>
<tr>
<td>Dalit</td>
<td>7</td>
</tr>
<tr>
<td>Madhesi</td>
<td>14</td>
</tr>
<tr>
<td>Plains indigenous (Tharu)</td>
<td>28</td>
</tr>
<tr>
<td>Hill indigenous</td>
<td>16</td>
</tr>
</tbody>
</table>

Table 2. Profile of Disappearances and Gender of Interviewees

<table>
<thead>
<tr>
<th>Gender of disappeared</th>
<th>Families interviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>79</td>
</tr>
<tr>
<td>Female</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gender of principal deponent</th>
<th>Families interviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>33</td>
</tr>
<tr>
<td>Female</td>
<td>53</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Perpetrator of disappearance</th>
<th>Families interviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>71</td>
</tr>
<tr>
<td>CPN-M</td>
<td>13</td>
</tr>
<tr>
<td>Unknown</td>
<td>2</td>
</tr>
</tbody>
</table>

– to redress, to justice and to reparation – plays no part in the formulation of their demands in response to their victimhood.

The first question asked during the interviews was an open one about the family’s priorities. Three needs emerged far more frequently than others:

• An answer – the truth – about the fate of the disappeared: ‘Is he dead or alive?’ (64 percent of families).
• Economic support in the form of ‘compensation’ or assistance regarding education, medical treatment and jobs for family members (62 percent).
• Justice, in the form of punishment of those responsible (29 percent).

For most of the families, the truth regarding the fate of their missing relative and economic support are of the highest priority, with justice considered less important. On being asked if they would like to see someone punished, the vast majority of families said they would. Thus a hierarchy of relative priorities emerged, rather than a set of alternatives. Dramatic differences were evident between the priorities of the more politicized and educated urban families and of poor rural families, most notably concerning justice. For example, of families from Bardiya district, predominantly Tharu, only 7 percent mentioned justice as a priority, whilst in the capital, 69 percent did. This finding demonstrates that for the most disempowered victims, the law has always either been a tool of power used against them or invisible to them through their lack of access to justice. Those with access to the discourse of rights and some understanding of law are more likely to see it as a tool that can aid them.

Need to Know the Fate of the Disappeared

Knowing the fate of the disappeared was a priority for the families, not least to end uncertainty:

It’s okay if they give us truth now, then the other things will follow. The first thing is finding out . . . The first thing is the truth and then comes the matter of justice.46

Eighty percent of respondents demonstrated a degree of ambiguity about what had happened to their missing loved one:

I am in two minds regarding whether she is dead or alive. If the door makes a noise at night, the children think that their mother might have come back . . . The children are still hopeful that their mother will come back.47

For families of the disappeared, because of lack of clarity over the victim’s fate, the death of their loved one is something almost impossible to admit to themselves. This can disrupt the normal grieving process and may lead to arrested grief or

46 Focus group interview, Gorkha, Nepal, 16 June 2008.
47 Focus group interview, Kathmandu, Nepal, 3 September 2008.
atypical reactions, known as ‘complicated grief.’ This phenomenon can be understood in terms of ambiguous loss:

Ambiguous loss is the most stressful loss because it defies resolution and creates confused perceptions about who is in or out of a particular family. With a clear-cut loss, there is more clarity – a death certificate, mourning rituals, and the opportunity to honor and dispose remains.

Among families of the disappeared, only 8 percent accept that their relative is dead. Others maintain hope that, even after many years, their loved one will return. The time that has passed has reduced hope but not extinguished it:

My heart says she is still alive, but it has been a long time, I don’t have any news so sometimes I think she may have been killed. Now slowly my hopes are breaking down. But there is still hope.

Some families have consulted traditional healers who have confirmed the fate of the disappeared through spiritual means, telling some that the missing are alive and others that they are dead. Families tell of contact with the spirits of the disappeared, often in dreams, which has reassured them that their loved one is alive. For many families, such access to the spirit world is very real and can significantly impact on their understanding of the fate of their loved one. It also permits an understanding grounded in culture of the repeated dreams that often result from a disappearance. For families to move on, to conduct rituals and to look to the future rather than the past, they seek an answer that convinces them beyond all doubt that their missing relative is dead.

**Need for Human Remains**

The traditional treatment of the dead varies between cultures in Nepal, with Hindus burning bodies and Buddhists, animists and Muslims burying them. Across the diverse religious traditions of Nepal, however, families are unanimous in their need to satisfy religious obligations: they need either the body or absolute evidence of death in order to complete rituals. Eighty-five percent of families sought to retrieve the body:

This [the body] serves as proof that he is dead. Therefore, we need the dead body. Even a bone can convince us that he is no longer alive. We also have to perform our rituals on the basis of it. We need a sign of proof of his death.

Families’ distrust of the state extends to a lack of confidence in any remains that might be returned to them. They propose two solutions to this problem. One is to trust tests, such as of DNA, with which some families are familiar. The other is

48 Blaauw and Lahteenmaki, supra n 17.
49 Boss, supra n 18 at 5.
51 Personal interview, R.B.D., brother of a disappeared man, Gorkha, Nepal, 18 June 2008.
that a ‘chain of truth’ be established that links the arrest, often witnessed by the family, to the body in the ground that has been exhumed:

If the security personnel who were responsible for the killing give us detailed information, mentioning the date and place of killing and the place where they have buried the body... there is room for trust. Yes, we need the chain of truth; we have to be provided with the detailed information, including who were the police responsible for the arrest. We won’t believe in any bones brought by the authorities.  

**Emotional and Psychosocial Impact and Needs**

Families of the disappeared are mostly found to suffer from normal emotional distress, rather than psychiatric disorders. Fifty-five percent of those interviewed described symptoms such as repeated thoughts and dreams about the disappeared, disturbed sleep and sudden feelings of anxiety. This generalized anxiety disorder was the most common symptom encountered, together with expressions 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 the families is about the disappeared person rather than the event of disappearance. In other words, their feelings are consistent with ambiguous loss.

Thirty-six percent of respondents, largely women, talked of how their mental capacity has been impaired as a result of the disappearance, and 27 percent, again mostly women, complained of chronic physical symptoms that they ascribed to the disappearance, most often as a result of constant tension and anxiety, presumably somatic:

> Whenever I go to check my health, the doctor tells me that I have been suffering from chinterog [my worries are my disease] ... My son has been also suffering from the same disease, the disease created by worry ... He has given me medicine to sleep.  

In three cases, respondents described individuals largely disabled by mental illness that was ascribed to their relative’s disappearance, with few avenues for treatment or support.

The findings indicate that most individuals have sufficient resilience not to suffer from significant disability as a result of their problems. In other words, they continue to function relatively well despite their suffering. This indicates the need for psychosocial interventions that support and promote such resilience. The most discussed coping mechanism was to share problems with someone, in particular one with the same problems, emphasized by the very positive response of those who had regular contact with a family association.

Yes, we do share our problems with those with the same problems but we never share with those who have a husband. We never share our problems with our elders or

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52 Personal interview, R.B.D., brother of a disappeared man, Gorkha, Nepal, 18 June 2008.
relatives because we don’t want to give them pain and trouble, we only share with friends. The main thing is that the one who is suffering, only they can feel it.\textsuperscript{54}

However, almost half reported that there was no one in the family or community with whom they could talk, leaving them isolated in their families and communities.

**Gender, Family and Community**

The joint family, in which sons stay with their parents and wives join the in-laws’ family home, is the building block of Nepali society and can offer great support, economically and emotionally. However, the family can also become the greatest single stressor if individuals are alienated from it. In many cases, the wife of a disappeared son will be perceived as seeking an opportunity to leave the family, typically through elopement with another man – an act considered a betrayal both of her in-laws’ family and of her husband. This often leads to the stigmatization of wives of the disappeared. As a focus group participant in Bardiya said, ‘My in-laws call me very bad things, such as prostitute, witch, widow, etc., in front of my children when they see me around.’\textsuperscript{55}

Thus, the wife of a disappeared man may be trapped within a family that resents her presence but does not want her to leave because of the social stigma that would result. Economically, a woman may be perceived as bringing nothing to the family, as being another mouth to feed. Leaving the house is an option, but the wife would often 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. . . . Sometimes I feel like leaving the house, but because of the love I have for my children, I cannot go.\textsuperscript{56}

The net result of this web of obligation and resentment is frequently an environment of extreme difficulty. Of the wives of the disappeared interviewed for the study, 32 percent reported that they have problems in the family and 12.5 percent said they have extreme problems.

Most families of the disappeared live in rural areas, in villages where families are part of a dense network of social relations. The disappearance of a relative can challenge those relations. A minority of respondent families reported significant or extreme problems with their community, including threats and resulting displacement. For half of families with relatives disappeared by the Maoists, the greatest impact of the conflict is their continued displacement from their home village. The issues that lead to women being stigmatized in the family can also lead to problems in the community. Eighteen percent of all women interviewed and 28 percent of wives said that they had problems in their community due to

\textsuperscript{54} Personal interview, S.B., wife of a disappeared man, Kathmandu, Nepal, 26 August 2008.

\textsuperscript{55} Focus group interview, Katarniya, Bardiya, Nepal, 30 July 2008.

\textsuperscript{56} Personal interview, S.T., wife of a disappeared man, Dhading, Nepal, 21 August 2008.
ambiguity over marital status, persistence in wearing the symbols of marriage and the impression that the wives of the disappeared are somehow predatory in their search for a new husband:

The relations with community members are not good. 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.57

One respondent noted that the solution to these problems is the authorities giving a proper answer regarding the fate of disappeared men, which would also resolve ambiguity about their wives’ status. This would address the confusion over identity, with a woman being neither a wife nor a widow.

**Economic Needs**

Ninety-three percent of the disappeared in Nepal are men, the traditional breadwinners of the society, and most are of an age at which their economic contribution to the family is crucial. Eighty-one percent of the men were married when they disappeared and 71 percent were between 18 and 35 years of age, with the result that families have been deprived of breadwinners and women of husbands, often with young children to support. As a result, many of the needs discussed here are the same as those of the poorest in Nepal, whatever the reason for their poverty. Families defined necessities as food, medical treatment and the education of children. Almost 80 percent of the families were unable to afford these basic necessities. The most extreme cases are families left with no economically active individual to provide support, notably older people who have no children to support them or women heads of household who have little capacity to earn a living. Some are forced to beg in order to eat. A mother from Bardiya who saw two sons disappeared said, ‘Lots of times I sleep without food. I just drink water and sleep. I can’t go to beg at night so I have no choice.’58 For most families, the greatest sacrifices they have to make concern healthcare and education. Sustainable long-term support is needed to pay for the necessities of life.

**Justice and Accountability**

When asked what justice means to them, a majority of respondents said prosecutorial justice, but many see justice in terms other than retribution (Table 3). A minority also sees a need to end impunity as an example for the future. When the families were asked who should be prosecuted, 65 percent mentioned direct perpetrators, 29 percent informers, 19 percent those who gave orders and 13 percent politicians. Many victims of both sides made the point that prosecuting lower-level perpetrators would not satisfy them. Some emphasized that responsibility was political and went to the very highest level on both sides. There was a

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consensus that the legal process would ideally be local, as that would give families the greatest access. There was no interest in an international process.

The government’s draft Truth and Reconciliation Commission Bill included a broad amnesty for perpetrators. Sixty-nine percent of the families rejected any amnesty, however:

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. 59

Thirty-one percent of respondents could envisage amnesty, but more than half said that it must be conditional, only granted to lower ranks who were following orders or subject to the demand that the truth about the disappeared be revealed. Amnesty was far more favoured among victims of the Maoists than among victims of the state, perhaps reflecting low expectations of prosecutions among the former, given that a Maoist-led government was in power at the time of the research.

Reparation, Relief and Compensation

The word ‘reparation’ was almost never used by the families, even where the concept was well understood by some. ‘Compensation’ was the term employed most consistently to articulate needs for reparation, reflecting the priority of economic support:

Paying compensation means an admission of wrongdoing even if there is no direct admission of the truth. Indeed, paying compensation means the state is paying the fine [for its wrongdoing]. 60

Families expressed the view that the most reparative act of the authorities responsible would be to reveal the truth about the disappeared. They were concerned that payments of compensation are somehow designed to distract families from pursuing the truth about their loved ones, with 74 percent of families saying they would not accept compensation if it preceded the truth. All the families faced a dilemma in having to choose among the need to feed themselves now, the need to know the truth before any compensation or reparations can be accepted and the

Table 3. Meaning of Justice to Families

<table>
<thead>
<tr>
<th>Meaning of justice</th>
<th>Fraction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecution</td>
<td>0.54</td>
</tr>
<tr>
<td>Compensation</td>
<td>0.45</td>
</tr>
<tr>
<td>Truth/an answer</td>
<td>0.31</td>
</tr>
<tr>
<td>Acknowledgement</td>
<td>0.07</td>
</tr>
</tbody>
</table>

59 Personal interview, R.S.D., wife of a disappeared man, Siraha, Nepal, 16 September 2008.
60 Personal interview, K.K., brother of a disappeared man, Gorkha, Nepal, 17 June 2008.
very idea of putting a value on the life of the disappeared by accepting money from the authorities. A number of families resolved this dichotomy through the concept of ‘relief.’ As the wife of a disappeared man in Dhading put it, ‘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.’61 Through relief aid, families can address their immediate needs without sending a message to the authorities that they believe the issue of disappearance is closed.

Acknowledgement

The families, particularly those that are politically engaged, have a burning desire to see the sacrifice of their loved ones acknowledged:

The government has to recognise the contribution of these families in bringing change in the country . . . The dead have to be declared as martyrs and a trust established in their names. Money is not everything; it comes today and it will be finished tomorrow. Respect is something important.62

Seven percent of respondents said they felt the disappeared had been acknowledged through payment of compensation or a judgement of the Supreme Court, and 42 percent of relatives of victims of the state said they had received acknowledgement from the CPN-M.

Unofficial efforts to memorialize the disappeared are underway, demonstrating the enthusiasm of communities to see such acknowledgement. The respondents mentioned their need for memorials to the disappeared, most seeking a local memorial. For example, in one district in the plains, a statue is being constructed of five local students who were arrested by the security forces during the conflict and remain missing. The junction it sits on has been renamed Martyr’s Crossroads.

Institutional Reform and Attitude to the State

Families of the disappeared emphasized their mistrust of the state and made demands for both institutional reform and action to address the needs discussed above. Such issues are a part of reparative demands for satisfaction that address nonmaterial issues through judicial process, official apologies and guarantees of nonrepetition.63 Half of all families believe they will never be able to trust the state, whilst 40 percent believe that this trust could be built. The brother of a disappeared man in Siraha noted, ‘There should be change in the army’s character and the soldiers who committed crimes should be punished. There should be a reform in the military.’64

64 Personal interview, B.P., brother of a disappeared man, Siraha, Nepal, 17 September 2008.
Differences emerged in perceptions among the victims of each side in the conflict, reflecting the divisions that remain. Seventy-one percent of victims of the state believe that the government will address the issue of the disappeared, whilst only 22 percent of victims of Maoists share this view. If the issue of disappearances is not addressed, a majority of the victims of the state said they would react, half by taking part in a political movement and a significant minority (15 percent) by participating in a rebellion with the use of arms:

The government has to understand our grievances and it has to respect our dignity. If the government of this 21st century does not understand our problem, the counter-revolution will take place.65

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

**Victims’ Agendas for Transition**

The dominant needs of families of the disappeared in Nepal are the truth about the fate of their loved ones, the return of human remains and economic support to ensure livelihoods. A clear tension with dominant narratives of transitional justice was revealed, in that victims give relatively low priority to judicial processes. Many of the needs discussed, and indeed the general impact of disappearance, emerge from the unique social and cultural position of affected families. This indicates that approaches that do not consider the context in which victims live are unlikely to meet their needs.

Not knowing the fate of missing loved ones has left many family members with significant emotional and psychological problems, including sleep disturbance, somatism and generalized anxiety order. The most extreme impacts, however, are social in nature, with wives of the disappeared experiencing loss of status within the family and identity issues in the community resulting in stigmatization. This serves to confirm that within marginalized communities, women are further disempowered by disappearances. The positive role that family associations have played in supporting those affected by disappearances suggests that solidarity and sharing is a crucial coping mechanism. This is consistent with the ambiguous loss model that sees the social reconstruction of meaning and identity as a prerequisite to living with the ambiguity of loss.66 Beyond their own organizations 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 of the disappeared but also that they have access to human

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65 Personal interview, K.B.K., brother of a disappeared man, Gorkha, Nepal, 16 June 2008.
66 Robins, supra n 18.
remains. The latter requires a comprehensive process of investigation, exhumation and identification.

It is unsurprising that economic needs are emphasized, given the profile of many victims as the poorest and most marginalized in a country with high levels of inequality. Families seek not a simple payment of compensation but livelihood guarantees that will allow them to feed and educate their families in perpetuity, restoring the economic security offered by their missing breadwinner. In this sense, reparation can be understood as filling the economic role of the disappeared. Reparation should also mean addressing health issues, notably the psychological impacts that have arisen as a direct result of disappearance. The state’s long-term marginalization of many communities that were also most impacted by the conflict leads to demands for recognition. These arise initially as a response to victimization, through demands for memorialization, martyr status for the dead and compensation. 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 ones have given their lives. The behaviour of the state and local elites in rural areas during the conflict was a continuation of the historical disempowerment of Nepali peasants. As a result, the demands of victims go to the heart of the goals of transitional justice: that the ‘new Nepal’ be inclusive and representative.

The cultural elements of the violation discussed here are evident in the fact that the communities most impacted by disappearance were minorities, notably the indigenous and Madeshis. Whilst the families interviewed for this study did not articulate needs on behalf of their communities, the leader of the Bardiya family association did, speaking for the district most affected by disappearances and where the vast majority of the missing are Tharu. He saw remedies as including reparations to the Tharu as a community, including support to traditional governance structures and health systems and a Tharu state as part of the emergent federal Nepal.67

Nepal’s Still-Born Transition

Nepal’s Constituent Assembly (CA), elected in April 2008 and tasked with writing a new constitution and acting as a legislature, represents the highest hopes of the peace process. The Maoists and traditional political parties that were part of governments that fought the insurgency share almost 80 percent of the CA’s seats. As a result, since 2008, little action on transitional justice mechanisms has been taken and the peace process itself remains largely frozen. The Maoist-led government published draft bills for both a Truth and Reconciliation Commission and a Commission of Inquiry into Disappearances, and began modest public consultations on these mechanisms, but no progress has been made on their establishment. The only significant action that has been taken concerning disappearances is the payment of 100,000 rupees (approximately

67 Robins, supra n 11.
$1,360) to families as ‘interim relief,’ spurred by judgements of a Supreme Court that has asserted its independence.68

The draft Disappearances Bill proposed a Commission with a remit to investigate disappearances during the insurgency, identify perpetrators and recommend reparations to victims. However, the Commission (which is slated to contain no victims’ representatives) falls short of addressing the needs expressed by the families in this study in many ways. It will inform a family if it learns that the disappeared person is dead, but is not mandated to pass on any other details. The bill makes no mention of a capacity for exhumation and identification of human remains, and so it is unclear if any such programme is envisaged. A handful of exhumations of those alleged to have been disappeared has occurred since this study was conducted, but huge challenges remain in terms of expertise, technical resources and political will for a comprehensive process. Whilst the bill foresees prosecutions, sentences can be reduced or waived subject to cooperation with the Commission. This appears to be an effort to introduce an amnesty procedure – a provision rejected by most respondents. The Commission would not be able to grant a missing person legal status so that property can be transferred in his or her absence. The reparation process outlined includes payment of compensation and free education, which would be welcomed by families, but for those who are not economically active these provisions offer little hope for an escape from poverty. The bill also makes no mention of the amount of the compensation, the payment of pensions, psychosocial support, memorialization or specifics regarding acknowledgement or formal apology.

The greatest challenge to a comprehensive transitional justice process is the reluctance of political actors to allow any action that might lead to prosecutions of individuals on their own side. This is particularly true of senior Nepali Congress figures in power during the time of greatest violations and perceived to be close to the army. The CPN-M and its leadership had direct command responsibility for the party’s armed forces, the People’s Liberation Army, and remains reluctant to see party cadres implicated in violations, despite pressure from the party grassroots to act on disappearances. A situation in which the parties to the conflict lead the transition and in which judicial process is compromised by a need to maintain peace is a characteristic dilemma of transitional justice.69 As long as perpetrators and those close to them have power, a comprehensive judicial process is unlikely to be initiated. The human rights community in Nepal has exacerbated the fears of those in power by emphasizing an agenda for transitional justice in which primacy is given to the need for prosecutions.70 Even if the Disappearances

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68 Follow-up studies indicate that by 2010 the vast majority of families, but not all, had received these payments.
70 A study (Robins, supra n 11) of recent publications by Nepali human rights agencies concerning the transition confirms this emphasis. In one, the eight ‘key recommendations’ all revolve around prosecution, criminalization and ending impunity. Of the 10 recommendations in a second, whilst some engage with the mechanics of preventing disappearance, most concern prosecutions
Commission is created, families are cynical about its prospects as a result of the history of commissions of inquiry in Nepal, which have been subject to political interference and seen their recommendations routinely ignored.

**Implications for Policy**

This study reframes the question of what a transitional justice process in Nepal should entail by comparing agendas emerging from elites with those of victims. The findings show that the views of victims are not being heard and that mechanisms beyond those being discussed at present are necessary to address the needs of families of the disappeared. More than this, they suggest that processes can begin that would address many of these needs without alienating powerful perpetrators and compromising a fragile peace. The implication for policy is not that judicial processes should be abandoned but that urgent needs for economic and psychosocial support, recognition and, potentially, truth must be addressed first.

Prosecutions can be considered as the situation evolves. This is in essence a sequencing strategy, allowing progress to be made where possible and postponing those issues that most threaten the political equilibrium.\(^{71}\) Whilst there are examples of mechanisms that can deliver truth decoupled from a judicial process, such possibilities have been excluded from Nepal’s transitional justice agenda largely as a result of human rights agencies, which see any mechanism without a direct path to prosecutions as flawed. The research shows, however, that as long as alternative processes do not exclude the possibility of future prosecutions, they would be acceptable to victims.

Some of the most urgent needs of families of the disappeared can be met in the short term without attracting resistance from political elites or the armed forces. These families’ economic demands revolve around basic needs and sustainable livelihoods. One approach suggested by the families is that government guarantee them education and healthcare or provide them with jobs that guarantee an income that will allow them economic security for the future. The authorities can potentially collaborate with agencies with experience of such assistance, targeting victims. Such programmes have already been conducted by agencies in many contexts, including Nepal, but without the collaboration of the authorities.\(^{72}\)

Compensation or relief payments can be used to empower wives of the disappeared. Economic independence gives such women the opportunity to make a free decision to stay or leave their husband’s family, and it increases a wife’s status within the family if she chooses to stay. Compensation can thus be used to address such issues, for example through the payment of a pension to a wife. Whilst the

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family may well take the money, the fact that the woman brings the pension into the home on a regular basis will increase her value to the family and raise her status within it.

Recognition and both political and historical memory are crucial in providing the public sanction that permits families to feel that both the disappeared and those left behind are valued by society. A programme of memorialization, or the giving of medals or other forms of acknowledgement by the authorities, is both affordable and hugely important to victims. The need for psychosocial support appears never to have been raised beyond the peer groups of those affected, and this reflects the narrowness of conceptions of transitional justice in Nepal. Whilst much of the negotiation of the transition has concerned the form of an inclusive state, citizenship and legal issues, there remains a blindness to continued injustice in the private sphere that arises directly from wartime violations. Social practice that enshrines exclusion at the level of family and community has not been considered a topic of transitional justice in Nepal.

More generally, the transitional justice agenda continues to marginalize social, economic and cultural rights in favour of civil and political rights. The conflict arose as a result of deep inequalities around class, caste, gender and ethnicity, and addressing these demands a broad view of transitional justice that encompasses fundamentally changing the basis of social relations in the country. The traditional political parties and human rights agencies, both led by elites that 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 emphasize the judicial, shrinking the emancipatory possibilities of the rights discourse. This study demonstrates the imperative for those who seek to speak for victims to consult with victims, support their mobilization and ensure that the practice of human rights is inclusive.

A victim-centred process cannot guarantee that victims’ needs will be met. Formidable obstacles remain to finding the answers that families seek, as well as ensuring that the resources for exhumations and other support can be found. However, the first challenge in attempting to address the needs of families of the disappeared is ensuring that they are known and part of the transitional justice agenda. The challenge for those tasked with creating mechanisms that meet the postconflict needs of both victims and the broader population is to ensure that in a society that has never listened to the most marginalized, a way is found of fostering the agency of victims in determining the mechanisms of redress.

Conclusion

This study aims not merely to document disappearances but to understand the global impact they have on the families left behind. These families’ priorities are for the truth about the disappeared and for economic support, which are seen as more important than the need for judicial process that has dominated discussions of transitional justice in Nepal. Some of the needs expressed here have distinct origins in the cultures of Nepal, notably the stigmatization of women in family and community, and the fact that the conflict largely targeted those from marginalized communities. It is likely, however, that many of the needs expressed – for an answer about loved ones and for justice and acknowledgment – have a degree of universality. Given that most conflicts occur in low-income states and that the poor are most likely to become their victims, economic needs are likely to be prioritized in many transitional contexts. The centrality of economic, political and social marginalization in the experience of Nepali victims is shared by victims of conflict in many contexts.

For transitional justice to address the consequences of conflict, empirical studies of the type made here are required to ensure that transitional justice is ‘evidence-based.’ The highly contextual demands of transition made by victims demonstrate that imported and prescriptive approaches not only do not address their needs but also sometimes fail even to identify them. A victim-centred approach permits processes to be steered by the needs of affected communities rather than by the priorities of 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 light of the needs of victims.

76 Pham and Vinck, supra n 20.