

Transitional Justice in Nepal :Foreign Interest and Media Coverage



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Abstract:

We passed one and half decade after Comprehensive Peace Accords. We achieve new constitution; Maoist combatants had been settled. But, the significant part of the peace process, Transitional Justice is yet to be addressed. This paper tries to analyze the Transitional Justice process in Nepal and foreign interest on it. It also tends to shows the conflicts of interest between political leadership and international community. And the paper tries to relate how this conflicts of interest and delay of the justice had slowed down the voice of the victims' lime light of media.

Keywords: Transitional Justice, Foreign interest, Media Coverage, Conflict of Interest

1. Introduction

After signing of Comprehensive Peace Accord (CPA) on 21 November, 2006, the decade long bloody war ended in Nepal. One and half of decade we crossed after the CPA, but the transitional justice is still yet too addressed. The most significant part of peace process is pending in conflict of interest of political leadership. The first part of peace process arm settlement, reintegration and rehabilitation of ex-Maoist combatants known People's Liberation Army (PLA) was settled as a unique Nepali model. But, the process of transitional justice is still lagging behind due to the conflict of interest.

Victims are still in hope of getting justice for one and half decade long. As inked on CPA, it was long waiting for the formation of two powerful commissions. On the legal basis of CPA and the Interim Constitution of Nepal, 2063 BS, The Commission for Investigation, Verification, and Reconciliation of Disappeared Persons Act promulgated in 2071 BS [1]. The act came into force with goal of bringing the real facts to the public about those people who were involved in serious violation of human rights during the armed conflict. The goal of the act was to create the environment of sustainable peace and reconciliation in the society by promoting the feelings of mutual harmony and tolerance; provide identity card and compensation to the victims of the armed conflict and recommend for legal section against the persons involved in such serious activities.

It was mentioned that the high-level committee would be formed on mutual consent to investigate the truth about the perpetrators in CPA [2]. Likewise, Article 33 (p, q and r) of interim constitution

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of Nepal 2063 stated that families of victims would be identified and relief would be provided to them based on the report of the commissions [3].

Article 33: Obligation of the State

(p) To make provisions for appropriate relief, recognition and rehabilitation of the family members of those who have died in the course of armed conflicts and those who, being injured in this course, have become disabled and infirm;

(q) To provide relief to the families of the victims who were subjected to disappearance during the course of armed conflict based on the report of the inquiry commission constituted in relation to such persons;

(r) To launch a special program in order to rehabilitate the displaced persons, provide relief in the case of private and public properties destroyed, and reconstruct the infrastructures devastated, during the course of armed conflict;

After 8 years of waits, The Enforced Disappearance Inquiry, Truth and Reconciliation Act, 2014 was formulated. Under the provision of this act, the Government of Nepal established Commission of Enforced Disappeared Persons (CIEDP) and Truth and Reconciliation Commission (TRC) on 27th Magh, 2071. Those commissions established with two years of working timeline had completed 6 years. But still the transitional justice is not completed.

Since CPA, in this one and half decade, many long term impacts took place. Transformation of Maoists from bullet to ballot, replacement of powerful monarch, settlement of PLA, formulation of new constitution through Constituent Assembly (CA) has been achieved. But only a little has been done on process of transitional justice. Six years of both TRC and CIEDP went on collecting over 60,000 and 3,000 complaints of conflict victims respectively.

The conflict of interest between political wills, victim's demands and foreign interest have been playing the negative role on completions of the TJ process in Nepal.

2. Approaches of TJ and Internationals practices

Transitional justice is a response to systematic or widespread violation of human rights [4]. The approaches of the transitional justice became known in the late 1980s and early 1990s [5]. According to UN backgrounder, transitional justice deals with two goals with a legacy of systematic or massive abuse. The first one is to gain some level of justice for victims and second is to enforce the possibilities for peace, democracy and reconciliation.

Today the field of the TJ has been broadening. The focuses of the TJ has been expanded from human right accountability to broader conception of transition involving range of legal regimes and mechanism [6]. In 2010 UN Secretary-General issued the guidance note on Transitional Justice [7]. The UN approach of Transitional Justice includes 10 guiding principles. The principle states that the base assistance for transitional justice on the unique country context and strengthen national capacity

to carry out community-wide transitional process. Not only has that it encouraged compliance with international norms and standard. Not only that UN has define TJ as "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation." [8]

UN works on the TJ are based on the international human rights laws, international humanitarian law, international criminal law and international refugee law [9]. For completions of TJ process in different nations different mechanism and measures have been established, such as TRC, CIEDP Nepal. These mechanisms are established with specific mandate and timeline with unique national models, international models or hybrids model. The Commission for Reception, Truth and Reconciliation in Timor-Leste's report includes a satisfactory account of the root cause of political conflicts. The commission has set up the broad definition of human right violation: violations of international human rights standards; violations of humanitarian laws; and criminal acts [10]. The Sierra Leone Truth and Reconciliation Commission, The Guatemalan Commission of Historical Clarification, TRC of Liberia are some of the international practices across the world.

In world power politics; Transitional Justice is considered as one of the important part of foreign policy.

On consolidated version of the treaty on European Union it states that- 'In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter [11]. In recent power struggle power house has interest on the third world nations especially on post conflicts nation. In such nation's presence and engagement of other international actors such as the UN and other regional organization and regional power such as USA, China, EU nation is increasing. As the part of dynamic context the EU is also operates. [12]

Maria Malksoo [13] has presented TJ and foreign policy nexus. The international politics, rendered as a generic social mechanism, which makes it possible to systematically link states' TJ and foreign policies. It sheds light on the interaction between states' identity and international norms and the consequent policy effects of this interaction. Transitional justice is a dynamic field, and closely related to areas of EU expertise, such as crisis management, peace- and institution-building and development [14]. As EU is supporting in intervention of violent conflict and crisis management there are connections and tension at conceptual and policy level. The 2008 European Security Strategy report declares:

‘The International Criminal Court should grow further in effectiveness, alongside broader EU efforts to strengthen international justice and human rights’. [15]

In 2008, the European Commission established a Transitional Justice facility to enable speedy and flexible funding to transitional justice measures. The EU and its Member States are the main

contributors of financial and technical assistance of the International Criminal Court. It is also committed to advancing universal support for the Rome Statute.

Foreign policy of individual nations under EU also gives priority to transitional justices. Germany supports transitional justice processes in different parts of the world through the provision of financial means, through exchange and knowledge transfer, and also through technical expertise [16].

International courts have been established to prosecute war crimes such as tribunals for the former Yugoslavia, Rwanda, Sierra Leone and Lebanon. The international Criminal Tribunal for former Yugoslavia (ICTY) was established in The Hague in 1993. It has taken the lead in prosecuting war crimes and crime against the humanity [17]. 83 cases (117 accusations) have been concluded. The Court was established by resolution 827 of the UN Security Council which was passed on 25 May 1993.

3. Overview of Foreign Actors on Transitional Justice in Nepal

Although the CPA did not directly indicate the term of TJ, but had promised a High-Level Truth and Reconciliation Commission (TRC) [18]. Numbers of the structure were also created to address the post conflict situation. Local Peace Committees (LPS), Nepal Peace Trust Fund (NPTF), Nepal Transition to Peace (NTTP), Peace and Reconstruction Ministry were major institutions created to address the peace process. In each districts, LPCs were created with local leadership. There was debate on the leaderships form political parties. Due to the partisan practice it was failed to work as its mandates.

Many donor agencies support on NPTF. It too was not far from partisan practice. The Joint government-donor initiative of NPTF had received significant amount of money from donor agencies. By the end of November 2011, 3.2 Billion of NPR was contributed by donor and 5.04 billion by GoN. The international involvement was called upon the peace process form the end of war. International agencies engagements in Nepal's peace process had their influences and are varied too. Starting in the early 2000s, the UN, International NGOs and bilateral agencies began to play a more explicitly political role by promoting dialogue [19]. In 2005 OHCR country mission was accepted and was set out in April 2005. In 2007 UNMIN was authorized by Security Council of UN in January. It was established to assist the implementation of CPA. UNMIN was preceded in August 2006 by appointment of personal representative by Secretary--General of UN for the deployment of 35 arms monitors and 25 election monitors.

In 2008, Ian Martin [20], the Secretary-General's Special Representative in Nepal, in an op-ed column in the guardian, called on the international community to strengthen its supports in peace process of Nepal.

He added-

The Maoist and non-Maoist parties have asked the United Nations to maintain a political presence while the issue of the former combatants is resolved, and we stand ready to support

peacebuilding, recovery and long-term development. From Delhi to Washington, from Brussels to Tokyo, the international community must be generous and steady in assisting Nepal to sustain the still fragile success of a remarkable peace process.

Following the decision of the Government of Nepal to not renew the mandate of OHCHR's Country Office in Nepal, OHCHR's field presence formally closed operations on 31 March 2012. Before that UNMIN was withdrawn in 2011. Though the UNMIN was operated and withdrawn; Teresa Whitfield argued that UNMIN's mandate was never properly understood by most of Nepalis [21]. Whitfield stated that UNMIN's Mandate did not position the UN to take the lead in promoting information about the peace process, yet Nepali authorities took no such initiative of their own.

The international communities like, China, India, European Union (EU), Denmark, United Kingdom (UK), Germany, Norway, Switzerland, USA have played important role on promoting peace process. They all have engaged with international norms against the violation of human rights [22].

4.Foreign Interest in Peace Process and Transitional Justice

As international communities have great involvement in Nepal's Peace Process and TJ; they have their own interest and their own policies.

Our two immediate neighbors have theirs' own interest and other international agencies and donor countries have their own. India have involved in peace process of Nepal from the beginning. 12-point agreement between CPN (Maoist) and 7 political parties was signed in India in 2005. India first offered international recognition and legitimacy to the Maoist. From the 12-point agreement to the formulation of new constitution in 2015, India wants to serve her interest. The India had given priority to Mahesh movement. India played on consolidating Madheshi parties in time of peace process. India rarely had spoken on TJ.

China has her own stands on Nepal's peace process. China always wants political stability and is involved indirectly with its policy of 'non-interference'. China is concern on Tibet issues. Nepal always has stand on the 'One China Policy.' China always has maintained a tie with the successive governments is still continuing.

Not only immediate neighbors, US, EU are major stakeholders in Nepal's peace process. US always have its own stands on Anti-Communist mindsets. Her foreign policy also works on Nepal's peace process and TJ. At early stage of peace process, US was unwilling on Maoist active role in governments. Till 2012, six years of CPA, Maoist leader were in terrorist list. In 2012 US removed Maoist form its terrorist exclusion list (TEL).

EU has its foreign policy on transitional justice. It has advocated on transitional justice. Not only that it has assisted on Janajati movement and advocated in inclusion movement. UK believe that the marginalize groups and inequalities on social groups have helped on Maoist movement. So it helps on Janajati empowerment and indigenous groups. UK had its interest on right to all religious groups. In 2015, the UK ambassadors' comment that Nepal's new constitution to include the right for all religious freedoms, including to convert was condemned by government of Nepal

EU has its controversial roles on Nepal Peace Process. On 2015 after formulation of constitution; EU released joint statement with India. Joint Statement of 13th EU- India Summit, indicate [23]-

The EU and India pledged continued support to Nepal in its reconstruction efforts following the devastating earthquakes in 2015, including capacity building and long term development. They also agreed on the need for a lasting and inclusive constitutional settlement in Nepal that will address the remaining Constitutional issues in a time bound manner, and promote political stability and economic growth. They encouraged an inclusive dialogue between all political parties in the Maldives and reform that ensures respect for democracy, human rights and the rule of law.

At that time GoN had opposed that statement.

5. Conflict of Interest

Nepal's political leaderships and international community always had conflict of interest on Transitional Justice.

Political leadership always been Feared of getting trialed by international court for insurgency-era cases. Then PM Baburam Bhattarai even remarked in his public speech after when Britain police arrested Nepal Army Colonel Kumar Lama under the principle of universal jurisdiction for ordering torture during insurgency, "Have we not been in power now, we would have been thrown to Hague long ago."

On February 2020, Pradeep Kumar Gyanwali addressed on the 43rd high level session of UN Human Right Council and committed to complete TJ process in own model. On the same session high commissioner addressed and urged the authorities to build trust in the process.

Nepal is at another crucial juncture in its transitional justice process. I urge the authorities to build trust in these processes by genuinely consulting a wide range of stakeholders, including victim groups and the larger civil society. [24]

The big question however remains, who determines the remedy that a particular victim or group of victims is seeking for? This is the question that all actors have to get right for TJ to have its intended outcomes.

On November 2018, a meeting was held in Bangkok on TJ process of Nepal. With the Aid of Swiss Government, the meeting was held with Nepali Leaders [25]. Leaders of the main opposition Nepali Congress hold discussions with the two ministers of the government, the ruling Communist Party of Nepal (CPN) and the Swiss government on financial support and planning.

The Swiss government had invited political stakeholders to Bangkok to reach a consensus on Nepal's transitional justice law. The meeting was attended by Energy Minister Barshaman Pun, Industries Minister Matrika Yadav, CPN leaders Bhim Rawal, Janardan Sharma and Haribol Gajurel. Minendra

Rijal and Ramesh Lekhak are also participating. Political Advisor to the President Sushil Pyakurel was also on that meeting.

The meeting was also attended by experts from Philippines who helped on reaching an agreement between the government and the Moro rebels.

On early 2019 Ian Martin visited to Nepal and raised the issue of TJ. After that, UN and western nation released joint statement on TJ process. The statement also mentioned Nepal's own blueprint for ending the transitional justice process and respecting Nepal's leadership and the Supreme Court's 2015 decision.

"We agree that Nepal cannot heal the wounds of the conflict and complete the peace process without the trust of the people," the statement said. PM KP Sharma Oli responded from Geneva- 'Diplomatic Mission should not be concern in Nepal's peace process.' Not only he, Spokesperson of GoN, replied- no one should teach, we know how to deal with. It is also known who is trying to sabotage the peace process [26].

6. Media Coverage

TJ process of Nepal is on lime light till last decade. But, the coverage is shadowed under the conflict of interest. Now the media coverage of TJ process is done occasionally on particular days and in particular events.

Local Media coverage seems nominal and international media coverage seems to zero. In recent months some media had covered the issue of TJ. As two commissions had submitted the report of the commission to the ministry news comes on lights. On first day of the years 2021, The Kathmandu Post had raised the issue of amendment to transitional justice law with no house.

Soon after the law was enacted in 2015, the Supreme Court, ruling on a writ petition, had directed the government to amend the Act saying that mass pardon cannot be given to perpetrators of gross human rights violations like enforced disappearances, rapes, tortures and extrajudicial killings. The amendment is yet to be done. While you search 'Transitional Justice in Nepal' in news.google.com for recent coverage, only little coverage you can see from the organization's newsletters. There is no other news coverage in English language. As per Transitional Justice Media update (January 01-15) by Democratic Freedom and Human Right Institute (DFHRI), 16 News coverage has been done. Among them 12 news are coverage of 'Hunger Strike of Gangamaya Adhakari'. Two investigative stories from the perspective of the victims have been published in Kantipur and CIJ. And rests are event based.

7. Conclusion

Victims had waited long for the justice. As TJ process is yet to complete, victims had started to lose their hope. Dissolution of the house of the representative has further torn this hope. The foreign concern, supreme court order and victims demands as well as two commissions need on amendment of the Act is yet to be addressed. With little progress, two commissions are bind on the legal

restrictions of incompetent act. Long conflicts of interest of the political leaderships, international actors had made the justice delayed. The delayed on the justice had made the victims voice silent in the Media coverage too.

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