

World's Disappearance Commissions: An Inhumanious Quest for Truth

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Abstract

Enforced Disappearance (ED) is a crime against humanity. It has been a long, but neglected history. It is a denial of all access to the families, lawyers and the like. The families of ED persons recall the whereabouts the fate of their loved ones dawn to dusk. A total of 54 post-countries have experienced having Truth Commissions. Such Commissions identify, investigate and reveal the past wrongdoings hoping to resolve crises. Out of these, 15 Truth Commissions were or are formed focusing more on ED persons to provide justice to the families of the victims and to end impunity prosecuting the (alleged) perpetrators. Ironically, the (alleged) perpetrators have received justice, but families of victims are further victimized. The paper is prepared based on the victim-centric approach following the human security theories: Freedom to Perpetrator, Freedom of Perpetrator-Victim, and Freedom at Victim. The Freedom to Perpetrator includes Algeria, Colombia, East-Timor, El Salvador, Jambu-Kashmir, Pakistan, South Africa, Sri Lanka, Uganda and Uruguay; Freedom of Perpetrator-Victim comprises Argentina, Bolivia, Chile and Peru; and Freedom at Victim consists of Nepal. Besides, amnesty and reconciliation measures were studied to analyze the failed, moderated and successful Truth Commissions. Nepal's disappearance Commission has neither amnesty nor reconciliation provision.

Keywords

disappearance, truth commission, justice, freedom, amnesty, reconciliation and transitional justice

1. Introduction

Enforced Disappearance takes place through excessive use of force during the armed conflict and/or the time of occupation or State of War that ultimately implies clandestine killings after involuntary disappearances. ED of a person may take place when the person is arrested arbitrarily, search and seizure rampantly, detained illegally, custodial tortured and raped mercilessly (Note 1) in the name of search or interrogation and killed heartlessly and the body hidden surreptitiously. Moreover, the State or non-State actors refuse to acknowledge the whereabouts or fate of such persons. On the other hand, the perpetrator dispose the corpses so that they can escape from future investigation or discovery, and thus the enforced disappeared person will vanish forever. The perpetrator (Note 2) who is allegedly involved in committing murder deny such crime in the lack of witnesses and evidences or testimonies

of the person's secret killing. The concerned State or conflicting party who are involved in such a heinous crime against humanity just pretend as if everything is normal. The conflicting actors often threaten the opponents, so-called enemies, and people not to investigate the truth of the enforced disappearances.

The enforced disappearance has a long, but neglected history. It is a denial of all access to the families, relatives, lawyers and other concerned institutions such as court and officials and keeping them outside the protection of the law (Pathak, May 18, 2015). It is a crime against humanity under international human rights, humanitarian law, democratic constitution and other legal instruments. The ED is more heinous crime than the extrajudicial killings. It is not only a cruel crime, but a complex human rights violations (Vermeulen, February 2012). When the concerned family know that their loved ones are murdered and they complete death ritual ceremony, the erosion of remembrance initiates in the minds of the families and others. In the case of enforced disappeared person, family and other concerned persons recall every-time dawn to dusk. The sound sleep also gets distracted if they see the loved ones in their dream. Nevertheless, enforced disappearance has been a criminal prohibition in terms of the laws of war (Finucane, 2010, p. 171).

Rome Statute of the International Criminal Court (ICC) states having the ED means the arrest, abduction and detention of a person by the State or an organized political organization. The ICC defines ED as a crime against humanity and its practice specifically addressed by the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) 2006 and Inter-American Convention on Forced Disappearance of Persons 1994 (United Nations, 1998).

The ED was first recognized as a grave human rights violations-abuses by human rights lawyers in Chile in the 1970s. They coined ED as human rights violations while some of the prisoners were kept in solitary confinement in custody by the security forces. Disappearance associates with the Latin American Dirty Wars (1970s to 1980s) that held between two Southern Cone Argentina and Chile countries.

A number of conflicting countries carried out enforced or involuntary disappearances in the course to repress the politico-ideological or socio-cultural opponent forces during armed struggles and people's movements or liberation-inclusion campaigns. The ED practices or practiced in the countries of geographically diverse continents or regions resulted in huge economic discrepancies, socio-cultural diversities and politico-ideological differences. A total of 54 post-countries have experienced transitional justice mechanisms to support conflict victims (Note 3). They are: Angola, Cote d' Ivoire, Eritrea, Ethiopia, DR Congo, Ghana, Kenya, Namibia, Nigeria, Somalia, Sudan, South Africa and Zimbabwe (13 countries in Africa); Cambodia, East-Timor, India (Jammu-Kashmir), Indonesia, Nepal, North Korea, Pakistan, Philippines, Sri Lanka and Vietnam (10 countries in the Asia-Pacific region); and Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Croatia, Cyprus, Georgia, Kosovo, Macedonia and Russia (10 countries in Europe). Similarly others are: Algeria, Argentina, Bolivia, Chile, Colombia, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru and Uruguay (13 countries in

America); and Egypt, Jordan, Iraq, Iran, Lebanon, Libya, Kuwait and Morocco (8 countries in Middle East) (Pathak, May 18, 2016).

The formation of the transitional justice processes in the above-mentioned countries illustrates that people were disappeared by the State and non-State authorities. Adolf Hitler had not been the first State-leader who practiced enforced disappearances to repress his political opponents. Stalin regime also followed the same method against his rivalries (Vranckx, 2006). The establishment of the disappearance commission is no lesser than a truth commission or a truth-seeking commission.

The general objectives, of the disappearance commission are to investigate acts of enforced disappeared person; to ensure that enforced disappearance consists of an offence under its human rights and criminal law; to set up jurisdiction over the offence committed on ED; to bring those offenders responsible under the justice; to advocate to provide minimum legal standards to the offender having the right for imprisonment; to assist the victims' families exhuming possible area of grave site and returning the human remains; to ensure that victims' families have a right to obtain reparation including compensation, rehabilitation, treatment, satisfaction and guarantee of non-repetition.

The analysis of this paper is done on the basis of the victim-centric perspective which focuses on truth, justice and reparation of the victims and their families for dignified lives. The study intends to identify the specific objectives of the enforced disappearances that have been practiced in the post-conflict countries around the world. It investigates the truth of all cases of ED where truth hurts a few of the (alleged) perpetrators, but restores justice in the victims' families and society at large. It further discusses how reparation program was initiated and livelihood support was provided to the victims' families and the like. It also compares how ED commissions function in socio-cultural diversities and prevailing political differences in the transitional peace period.

In addition, the paper analyses cause and effect relationship owing to author's active involvement in the investigation of the enforced disappeared persons for a long time. It draws important lessons from the various quarters having the interpretations of peace accord-agreement, transitional justice and use of international human rights standards and practices. The personal experiences are reflected either through literature reviews or exchange-sharing and participation. The study purely follows both the theoretical conception and the practical approach.

2. Enforced Disappearance Commission: Theory to Practice in General

Many notable enforced disappearance commissions had given utmost importance to the blanket amnesty in the name of reconciliation. The amnesty provision was incorporated due to the strong presence of (alleged) perpetrators when the peace accords were signed. In such cases, the voices of the victims and their families and human rights organizations were given less priority, but the (alleged) perpetrators were highly encouraged. Theoretically, such practice is known as Freedom to Perpetrator where truth-seeking commissions wipe-out the past committed human rights violations and crimes.

Some transitional security (Pathak, February 4, 2013) countries pursue equal importance to provide justice to victims and end impunity granting prosecution to the (alleged) perpetrators (Penrose, 2000, pp. 192-220) who are involved in serious human rights violations-abuses and crime against humanity. Such practice is usually called Freedom of Perpetrator-Victim. A few of the truth commissions have precisely given emphasis to fully ensure justice to the family of victim and conflict affected society prosecuting the perpetrator (Vicente, April 2003). This theory is generally spelled out as Freedom at Victim.

In the course of ensuring justice to the victim and her/his family, most of the commissions have failed, leading to Freedom to Perpetrator. Others have moderated effects on or partially succeeded (neither failed nor succeeded) in prosecuting the (alleged) perpetrator and providing justice to victim and his/her family. This scenario is known as Freedom of Perpetrator-Victim. A few of Commissions have succeeded in terms of complying justice to the victims, which is entitled as Freedom at Victim. These freedom majors are developed on the broader framework of human rights, called human security.

3. Freedom to Perpetrator

The truth-seeking commission investigates the enforced disappearances and recommend the Government to bring the (alleged) perpetrators under judicial law and provide justice to the families of the disappeared persons. The (alleged) perpetrators who were powerful in the past (during the armed conflict) and present (during the transitional peace) periods are often and exclusively supported by the Government, political parties and international community in the name of amnesty and reconciliation. Both amnesty and reconciliation are the principal tools of (alleged) perpetrators. The freedom to perpetrator mostly focuses on the impacts of truth-seeking commissions that have been practiced in Algeria, Colombia, East-Timor, El Salvador, Jambu-Kashmir, Pakistan, South Africa, Sri Lanka, Uganda and Uruguay.

A total of 7,000 persons were arrested, tortured and disappeared either by the security forces and their favored civilian groups known as “self-defense groups” or Islamic militants (guerrillas) between 1992-1998 in **Algeria** (Human Rights Watch, February 2003) during the seven years of dirty civil war. The Government established the Ad Hoc Inquiry Commission in Charge of the Question of Disappearances in 2003 for the term of two years. The Ad-Hoc Commission was set up to identify, investigate and determine the whereabouts the fate of the enforced disappeared persons and to draft a reparation for the families of the disappeared persons. However, mandate of the Commission did not extend identifying and investigating the (alleged) perpetrators. The Ad-Hoc Commission submitted a confidential report on March 31, 2005 but the Government did not make the report public (United States Institute of Peace, September 21, 2003).

The Commission received complaints from the relatives or families of the disappeared persons with a purpose to recommend compensation (Human Rights Watch, April 13, 2005). The Government

introduced a Charter for Peace and National Reconciliation in February 2006 which is also called controversial amnesty law (Note 4). The Charter grants amnesty for most crimes committed by both the state security forces and the former armed Islamist groups (Note 5). It provisioned up to five years of imprisonment to those who made any statement or were involved in any activity that harmed state institutions and the image of Algeria (United States Institute of Peace, September 21, 2003). It means no judicial or quasi-judicial investigations were carried out to the state-armed groups who were involved in human rights violations and abuses. However, the armed forces responsible for enforced disappearances promised to provide some financial assistance individually to the victims' families, but when the amnesty charter was proclaimed, many of the (alleged) perpetrators were denied of their promised assistance. Only about 2,640 families received compensation as reparation (United States Institute of Peace, September 21, 2003).

It is to be noted that the Algerian Peace Charter was severely criticized by the human rights individuals and institutions within their land and beyond. They argue that the Charter institutionalized the culture of impunity because of the amnesty law (Human Rights Watch, February 28, 2006). The families of the victims and human rights organizations demanded to identify and investigate the whereabouts the fate of the disappeared persons, and to provide justice to them. On the other hand, the radical Islamist group named Al-Qaeda rejected the Charter calling that move as "Jihad" against the regime. Similarly, the UN Working Group on Enforced or Involuntary Disappearances was restricted to visit Algeria in mid-September 2014 (A/HRC/30/38, August 10, 2015).

The **Colombian** National Commission for the Search of Disappeared Persons (a permanent national body) was created by Law in 2000. It was established after more than 50 years of internal conflict that witnessed at least 61,604 cases of forced disappearances (http://www.coha.org/forced-disappearances-in-colombia/#_ftn2) including 14,181 missing children and teenagers. Colombia stands first amongst the countries with the most disappeared persons in Latin America. Prosecutor General Office was reported to have been "investigating the disappearance of 45,154 people who are thought to be buried in mass graves (<http://www.ic-mp.org/where-we-work/the-americas/latin-america-and-the-caribbean/colombia/>)". The bodies of 38 children killed by the FARC found in a mass grave in the Colombian town of Narino (<http://www.colombiareports.co/38-child-bodies-found-mass-grave/>). Colombians have definitely been subjected to arbitrary arrests and detentions and abductions and whereabouts of the persons have still remained outside the protection of the law. Colombia has also ratified Inter-American Convention on Forced Disappearance of Persons (1994) in April 2005.

In 2005, the Colombian Government initiated and mandated the National Commission for Reparations and Reconciliation (NCRP). The NCRP includes an investigative arm which is known as Historical Museum of Memory. The Memory accounts for the origin and evolution of the internal armed conflict specially focusing on the victims and it links between reconstruction of memory and democratic

strengthening (<http://www.usip.org/events/truth-and-reconciliation-in-colombia-the-work-the-national-reconciliation-commission>). The Commission was given an 8-year tenure with the broadest mandate of any truth telling project to date (http://www.scielo.org.co/scielo.php?pid=S0121-32612013000200008&script=sci_arttext). Colombia heads towards the Truth and Reconciliation while the Government accepted the integration of Revolutionary Armed Forces of Colombia (FARC) leaders into legal political life in 2012.

While the Government and the guerrilla group (FARC) are on a final stage of a Comprehensive Peace Accord (CPA) deal, the proposed accord to recover and return the remains of tens of thousands of enforced disappeared persons are already in effect (<http://www.usip.org/events/colombia-peace-forum-seeking-truth-the-disappeared>). The final agreement may be reached at the end of 2016. The accord focuses more towards reconciliation and reparations such as compensation, reintegration to ex-combatants into civilian life, implementation of peace locally and address the socio-economic disparities and political exclusion (<http://www.usip.org/publications/2016/01/27/the-current-situation-in-colombia>). No issue of disappearances shall be covered in the forthcoming accord. All issues such as amnesty, reconciliation and reparation are largely incorporated as Colombia is no less than informal colony of USA's power, politics, property and privilege.

The Council of Hemispheric Affairs said, "The perpetrators of enforced disappearances still act with impunity, which results in an ongoing battle for justice fought by families of the victims along with national and international human rights bodies". Colombia has also ratified International Convention for the Protection of All Persons from Enforced Disappearance in October 2010. The Colombian Government has double standards: compliance ratified conventions and legal powers necessary to prosecute the (alleged) perpetrators and recognize the families of victims as victims themselves as does the Inter-American Court (http://www.coha.org/forced-disappearances-in-colombia/#_ftn3).

Between 1975 and 1999, more than 200,000 East Timorese were extrajudicially killed by the Indonesian occupation forces. In 1999, much awaited independence referendum was conducted by the United Nations. The Indonesian military and its militia escalated a campaign of intimidation against East-Timor (Timor-Leste) population which killed over 2,000 Timorese assaulting pro-independence activists and conducting several massacres. The campaign destroyed 75 percent of the country's infrastructures. One third of its population (some 240,000 persons) fled their homes towards Indonesian province of West Timor (<http://www.etan.org/news/2006/cavr.htm>). A UN peacekeeping force eventually restored the rule of law. After the independence, East Timor undertakes a courageous transitional justice process (<http://www.cja.org/where-we-work/timor-leste-east-timor/>).

The East Timor Commission for Reception, Truth and Reconciliation (CAVR—the Portuguese acronym) was established in 2001 which continued its function until its dissolution in December 2005. It was an independent, statutory authority led by seven-Commissioners mandated by the UNTAET Regulation. It undertook truth seeking for the period 1974-1999, facilitated community-level

reconciliation for less serious crimes and made recommendations. The report named “Chega” was presented to the President, Parliament and Government of East Timor in October 2005 (<http://www.cavr-timorleste.org/>).

The Commission recommended aiming to achieve justice and end impunity. The report advocated for the establishment of an international tribunal based on the UN Charter by the Security Council (In December 2005, a secretariat was established to disseminate the Commission’s report. However, the dissemination could not be carried out smoothly in the lack of funds (Note 6)).

The two countries namely East Timor and Indonesia jointly established bilateral Commission on Truth and Friendship (CTF) in August 2005. The CTF was set up to prosecute the (alleged) perpetrators in East Timor before the Special Panels for Serious Crimes and in Indonesia before the Jakarta Ad Hoc Human Rights Court regarding the violence that occurred in 1999 in conjunction with a referendum in East Timor for its independence.

The investigation of the conflicts were also carried out by the Indonesian National Human Rights Commission and by a Commission of Experts (<http://www.wcsc.berkeley.edu/east-timor/east-timor-truth-commission/>). It is to be noted that both East-Timor and Indonesian Governments tried to settle their differences themselves without outsider’s judicial intervention. However, the CTF recommended for amnesty to all (alleged) perpetrators prohibiting recommending prosecution. It conducted public hearings, closed hearings and extensive reviews of earlier investigations and trials during 2007-2008. The final report *From Memory to Hope* was officially presented to the Presidents of both the countries in July 2008 in Bali (<http://www.wcsc.berkeley.edu/east-timor/east-timor-truth-commission/>). The World has seen many Truth and Reconciliation Commission, but CTF was observed to be the first bi-national hybrid Commission in the world which was established by the two independent nations (Per Memoriam Ad Spem, March 31, 2008).

Despite the formation of Commissions and UN Tribunal, the performance of the recommendations were disappointing. Out of a total of 303 arrest warrants were issued, the majority were low-ranking members of the Indonesian Armed Forces and local pro-Indonesia militias. Senior officials of the Indonesia army and political leaders who were responsible for the crimes against humanity were left with impunity. The report acquitted all 18 of the Indonesian Armed Forces officers, including General Wiranto responsible for orchestrating the violence (Katzenstein, Spring 2003). Thus, hybrid Commissions’ recommendations failed to bring the (alleged) perpetrators into the judicial action (Human Rights First, July 15, 2008). Human rights activists and institutions condemned such non-compliance of the report to prosecute the (alleged) perpetrators.

After independence from Spain, **El Salvador** dipped into a bloody civil war (1980-1992). The conflict caused more than 75,000 deaths, 8,000 disappearances, 500,000 internally displaced persons and one million refugees (TRIAL. 2016). The Peace Accord was signed between the Farabundo Mart iNational Liberation Front (FMLN) and the Government in January 1992 in Mexico City in mediation of the UN

(United States Institute of Peace, January 200). The Article 2 of the Peace Accord said, “The Commission shall have the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth” (United States Institute of Peace, January 200). The Truth Commission was established by the United Nations to investigate and report on human rights violations and abuses. The UN established its office to implement the accord in three areas: respect and promotion of human rights, military reform and creation of a new police. While Salvadorian judicial system failed to investigate crimes or to enforce the law, the Government established the Truth Commission (United States Institute of Peace, January 200).

The Commission examined the systematic atrocities committed by both individuals and collective masses and made political or legal recommendations to prevent them from repetition. The team comprises 60 people including three Commissioners, four advisers, 17 researchers and 14 experts. The Commission registered more than 22,000 complaints including 60 percent related to extrajudicial executions, 25 percent enforced disappearances and 20 percent allegations of torture and other cruel and inhumane degrading treatment (<http://www.usip.org/publications/truth-commission-el-salvador>). The 95 percent violent acts were done by the State authorities alone (Hayner, 2011).

The Commission recommended in four areas: (1) the result of the investigations, (2) eradicating the structural causes of the acts of violence, (3) preventing the repetition of such acts, (4) and promoting national reconciliation (<http://www.usip.org/publications/truth-commission-el-salvador>). The Commission recommended dismissal of army officers, civil servants and called for extensive judicial-legal, security and institutional reforms.

Immediate after the submission of the report in March 1993, while the army rumored of a military coup, the Salvadorian Parliament voted for a full, absolute and unconditional General Amnesty for the war crimes committed till January 1, 1992. Both civilian government and the armed forces rejected the report, but 200 junior officials were removed from the army. In 2008, human rights lawyers filed a complaint in the Spanish Court against President Burkard and 14 former senior members of the military (<http://www.usip.org/publications/truth-commission-el-salvador>). In 2015, the UN Working Group issued a press release calling the Government of Spain to either try or extradite the (alleged) perpetrators of enforced disappearances (A/HRC/30/38, August 10, 2015). The Government has yet to implement the recommendations including the reparation (monetary and memorial) to victims (Burnett, Victoria, November 13, 2008).

Jammu-Kashmir in India is one of the most militarized zones in the world. The disputes rise over local autonomy. Militarized zone controls the life and liberty of a person by a draconian legislation (Note 7) practicing excessive use of powers to arbitrary arrest and detention, search and seizure, custodial torture and rape, extrajudicial killing using lethal force and enforced disappearances. It is estimated that over 10,000 people are disappeared from 1989-2014 in Jammu-Kashmir

(<http://www.disappearancesinkashmir.org/about.html>) alone.

More than 500 (out of over 2,000) families of disappeared persons in Jammu-Kashmir have filed complaints before the State Human Rights Commission (SHRC) seeking DNA tests to be conducted on the thousands of unmarked mass graves found in northern Kashmir. The victims' families filed cases while State Government of Jammu-Kashmir refused to exhume bodies in unmarked graves and carry out DNA tests to ascertain family's identity. The Government claimed that buried unmarked graves comprised local and foreign terrorists, mostly from Pakistan. However, the Government statement is without any proof and investigation of those buried (<http://www.ndtv.com/india-news/in-kashmir-families-of-missing-people-move-human-rights-panel-498188>). At the beginning of 2014, Jammu-Kashmir Chief Minister stated that if the Government of India and Pakistan want to develop confidence building measures, we can establish Truth and Reconciliation Commission for DNA proofing to investigate thousands of unmarked graves on enforced disappeared persons (<http://www.greaterkashmir.com/news/2014/Feb/12/-omar-for-setting-up-of-truth-and-reconciliation-commission--13.asp>).

The SHRC also recommended the formation of an independent body to look into all dimensions of unmarked graves in the State (<http://www.ndtv.com/india-news/in-kashmir-families-of-missing-people-move-human-rights-panel-498188>). Even on January 20, 2015, former Jammu-Kashmir Chief Minister Omar Abdullah made a fresh demand for establishing a TRC in the State for addressing the issues related to human rights violations including enforced disappearances (<http://www.thehindu.com/news/national/other-states/omar-makes-fresh-demand-for-truth-and-reconciliation-commission-in-jk/article6808477.ece>). The Association of the Parents of Disappeared Persons in Jammu-Kashmir (APDP) reported that more than 10,000 people are forcefully disappeared in Jammu-Kashmir, but the Government claimed nearly 4,000 people have been disappeared since the conflict began in 1989 (<http://www.hrw.org/news/2007/02/14/india-investigate-all-disappearances-kashmir>). No further works to establish Truth Commission has been initiated since then. Moreover, the Central Government of India is also reluctant to establish the TRC and investigate the truth fearing the international community's attention on the cause of ED there.

Pakistan has been participating on war against terror (US invasion in Afghanistan) since 2001. A number of people disappeared on the so-called war on terror in connection with the Islamist armed groups. The report of Working Group of Enforced or Involuntary Disappearance in 2013 said, "In Baluchistan alone...more than 14,000 people are still missing..." (A/HRC/22/45/Add.2, February 26, 2013). Baluchistan is a state where greater number of disappearances largely occur. The disappeared persons include human rights activists, journalists and members of separatists and nationalists.

Pakistan's Supreme Court and human rights institutions documented that intelligences and security agencies are involved in causing enforced disappearances. In July 2013, Attorney General admitted that more than 500 persons were disappeared from the custody of the security forces. The UN General

Assembly time and again stated enforced disappearance as an offense to human dignity and a grave and blatant violation of international human rights and humanitarian law. In 2012, the UN Working Group on Enforced or Involuntary Disappearances in Pakistan reported that disappearances occurred based on country's counterterrorism laws, Anti-Terrorism Act 1997 and the Federally Administered Tribal Areas (FATA) and Provincial Administered Tribal Areas (PATA) in Action (in aid of civil powers) Regulations 2011 (<http://www.hrw.org/news/2013/08/28/pakistan-ratify-treaty-enforced-disappearance>). Besides, Pakistan promulgated two different laws: Actions in Aid of Civil Power Regulations 2011 and Protection of Pakistan Act. These provide complete impunity to the (alleged) perpetrators of enforced disappearance and legalize the action (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12552&LangID=E#sthash.6V3zmrXR.dpuf>). Moreover, no Truth Commission has been established till date.

South African Truth and Reconciliation Commission (TRC) which was composed of 17 commissioners (9 males and 8 females) was created after the end of Apartheid in 1996 under the Promotion of National Unity and Reconciliation Act 1995. The TRC was responsible to investigate the enforced disappeared persons too. It was first given a mandate to accomplish the task within 1998, but extended to 2002. The TRC established three committees: Human Rights Violations Committee (HRV Committee), Amnesty Committee (A Committee), and Reparation and Rehabilitation Committee (R and R Committee). The TRC had its own investigative unit and witness protection program (Zyl, Spring 1999). The TRC has mandated to investigate gross human rights violations (1960-1994) and it included disappearances, killings, abductions and torture (United States Institute of Peace, December 1, 1995) and other cruel and inhumane degrading treatment.

The Commission collected over 1,500 victim statements concerning disappeared persons of which 477 were named as missing people and 64 enforced disappearances (Disappearance: Information Exchange Center, undated). The South African Missing Persons Task Force Team was formed under the National Prosecuting Authority. International Commission on Missing Persons supported in providing the DNA testing and identification on the victims of forced disappearances. The missing persons' cases were related homicide and other crimes. The Task Force collected information on the number of disappeared persons (Disappearance: Information Exchange Center, undated), but the Government concerned institutions including National Intelligence Agency continued to destroy the human rights violations records (United States Institute of Peace, December 1, 1995) and other important documents and testimonies. The demolition of such evidences was instructed from the top authorities. As a result, large numbers of (alleged) perpetrators of the enforced disappearances received amnesty. The final report of the TRC covers the structural and historical background of violence, individual cases, regional trends and broader institutional and social environment of the apartheid system.

The National Director of Public Prosecutions was granted wider discretion power in favor of the (alleged) perpetrators for not to prosecute in 2005. In 2007, the then President Thabo Mbeki instituted

liberal process to grant special pardons in addition to the amnesties granted by the TRC and the process continued further by his successors against the challenges of civil society organizations, human rights activists, victims' families and courts. The same Mbeki, the then Deputy President and President of African National Congress kept serious reservations on the TRC report while President Mandela apologized to all victims' families on behalf of the nation (United States Institute of Peace, December 1, 1995).

The Act 1995 neither required the (alleged) perpetrators to file applications for apology and forgiveness for their enforced disappearances nor were the victims notified about the times and places of public hearings to forgive the (alleged) perpetrators (Grange, July 2014). The (alleged) perpetrators had given the opportunity of being forgiven for their past crimes and atrocities simply by telling their stories. International community including United Nations was largely in favor of the (alleged) perpetrators as most of them were white descendents and all victims were black from the poor country. Moreover, the popularity of Nelson Mandela spread internationally—mostly among the white people, but declined within his own fellowmen in South Africa and Africa in general. It had happened while the victims and their families had not suffered from injustices of atrocities, but they were denied of reparation largely as the Government claimed inadequate funds to cover the payment and compensation costs.

The TRC has failed to bridge the gap between the black and white communities besides failing to provide justice to families of disappearances. Rather than providing restorative justice to the conflict victims, the TRC worked in favor of the (alleged) perpetrators. The grievances and emotions of the witnesses of the victims were not properly reflected due to inter-lingual rendition of mimic translators. While the former President F W De Clark appeared and reiterated apology for the suffering caused by the apartheid before the TRC, many black African angered at the amnesty and reconciliation being granted to such perpetrators.

The 2nd Annual Desmond Tutu International Lecture delivered by Graca Machel in 2012 in South Africa noted, "South African society is violent, intolerant, accusatory and angry because it has failed to address the emotional mutilation wrought by apartheid" (Grange, July 2014). Evaluating the TRC, Elizabeth Stanley said, "Yet, with no real change in social conditions and no clear attempt to address perceptions of injustice and exclusion amongst certain groups, the TRC has lost its impact" (Stanley, July 15, 2001). The perpetrator-centric justice continues apartheid in the eyes of the great majority victims there.

Thus, the TRC failed to achieve reconciliation between the black and the white communities (Vu Lan, December 4, 2015). Justice is a prerequisite for reconciliation rather than in favor of the (alleged) perpetrators of abuse (Storey, September 1997). Prominent anti-apartheid activist Steve Biko was killed by the security forces taking into the custody. Biko's family believed that establishment of the TRC was no lesser than a vehicle for political expediency against their right to justice (Kentridge, September 12, 2011). Thus, South Africa failed to provide justice to the poor victims, rather encouraged to the (alleged)

perpetrator. It means, the truth commission was right to provide justice to the (alleged) perpetrator, but failed in terms of victim-centric justice perspective.

In **Sri Lanka**, a total of 11 Commissioners were formed including three Commissioners at each Zonal Commission in three different geographical parts of Sri Lanka and two Commissioners for All Islands Commission. Three Commissioners were established to inquiry on enforced disappeared persons for the period of 1995-2000 armed conflict.

In 1990, the then President Ranasinghe Premadasa tried hard to resolve the crisis through dialogue with Tamil Tigers instructing Indian Peacekeepers to leave the country. Indian PM Rajiv Gandhi (Note 8) sent Indians troops to fight against the Tigers in 1987. President Chandrika Bandaranaike Kumaratunga proclaimed presidential decree to investigate the truth of persons who were disappeared in December 1994 (<http://www.usip.org/publications/commissions-of-inquiry-sri-lanka>). Over 20,000 persons were forcefully disappeared during the armed conflict (1983-1989) (Human Rights Watch, March 2008).

The three Commissions' mandate was to determine the whereabouts the fate of the enforced disappeared persons and identify appropriate punishment against those responsible for the disappearances or abductions. All Islands Commission was established to investigate the truth of the enforced disappearances in areas for not covered by the three precious Commissions.

The Commission collected more than 27,000 complaints and investigated over 15,000 cases of enforced disappearances. However, 10,136 complaints were transmitted to All Islands Commission which also collected materials and evidence of 4,473 disappeared persons. All Islands Commission collected 16,305 additional complaints, but those were prohibited reviewing its mandates and transmitted to Sri Lankan Human Rights Commission. The Human Rights Commission eventually investigated 2,127 cases further. In July 2006, the Human Rights Commission decided not to do further analysis unless positive directions received from the Government or the high authority (<http://www.usip.org/publications/commissions-of-inquiry-sri-lanka>).

Even without a detailed identification and investigation of enforced disappeared persons, the Commissions submitted a report with some recommendations (<http://www.justiceinperspective.org.za/asia-a-australasia/sri-lanka.html>). A few of the victims' families and relatives who had a close link with the ruling parties and the Government mechanism received some compensation based on the recommendations. However, majority of the common victims were denied of it. It is remarkable that the Commissions neither conducted a thorough investigation of all enforced disappeared persons nor were the recommended (alleged) perpetrators brought under the judicial actions (Human Rights Watch, March 6, 2008). Among the several thousand (alleged) perpetrators identified and recommended, less than 500 were convicted (<http://www.usip.org/publications/commissions-of-inquiry-sri-lanka>).

Sri Lankan President Mahinda Rajapaksa established the truth-seeking body named Lessons Learnt and Reconciliation Commission (LLRC) in May 2010. The Commission was mandated to investigate the

allegations of war crimes (February 2002-May 2009). While the president formed the Commission as an institution of his own (Note 9) (rather than high-level autonomous body), it was widely criticized by human rights organizations inland and abroad (Justice in Perspective, 2012). In November 2011, or 18 months later, the Commission submitted a report stating that the Liberation Tigers of Tamil Eelam (LTTE) deliberately targeted civilians repeatedly violating international humanitarian law (Associated Press, December 16, 2011) and civilians were accidentally killed by the state-security forces (Doherty, December 19, 2011). However, the international community refuted the recommendations.

In June 2010, UN Secretary General Ban Ki-moon appointed a three-member panel of experts to investigate the alleged violations of international human rights and humanitarian law. The Panel released its final report on March 31, 2011 stating that the Government forces committed grave human rights violations and deliberately prevented humanitarian assistance for reaching the civilian population in LTTE areas (United Nations, March 31, 2011). However, the Government rejected the UN findings and denied responsibility for civilian deaths. Since then, there is no systematic account of the enforced disappeared persons.

In **Uganda**, a junior army officer Idi Amin Dada (1971-1979) ousted the then authoritarian President Milton Obote from power. While Amin was initially welcomed by frustrated people, he quickly dissolved parliament and grasped absolute power amending the Constitution. Ugandan security forces carried out an organized extrajudicial killings, disappearances and arbitrary arrests and detentions against their opponents who protested Amin's absolutism. While strong public pressure rose gradually against Amin's Government, he established the Commission of Inquiry into the Disappearances of People in Uganda in June 1974 to investigate the enforced disappearances starting from his early rule January 1971 to mid-1974. That Commission was the first Truth Commission to set up truth and to make required recommendations. It was established by the President's decree. The Commission comprised his trusted four (all men) members: Expatriate Pakistani judge, two Ugandan police superintendents and a Ugandan army officer (United States Institute of Peace, 2010).

The investigation identified a total of 308 enforced disappeared persons. The Commission concluded that most of the enforced disappearances were carried out by Amin's trusted public security unit and national investigation bureau. The report, however, did nothing to influence the continued brutality of his authoritarian regime. Rather, the Commission recommended reforming the police and the armed forces and suggested that law enforcement officials should be trained on international norms and standards of human rights (United States Institute of Peace, 2010). The Public Security Unit and the National Investigation Bureau were set up by the President Amin exiting them from their main responsibility of enforced disappeared persons. However, his security forces poorly followed it.

Besides, hundreds of thousands of civilians lost their lives to the military dictatorships. Yoweri Museveni Government re-established a second Commission of Inquiry into Violations of Human Rights in May 1986 under the Justice Ministry. The Commission was created to investigate all aspects

of human rights violations-abuses committed during the country's independence movement (October 1962-January 1986) (Note 10). The six-member male Commission especially focused on arbitrary arrests and detentions, force displacements, enforced disappearances, extrajudicial killings and discrimination (TRIAL, 2016a). It took 8 years (1986-1994) to accomplish the final report in the lack of political support and financial downturn. The report recommended human rights education into the curricula of schools and universities and training programs to the security forces (TRIAL, 2016a). The Commission identified transitional justice as political strategy to provide legitimacy to the new Government. Moreover, President Amin never made public the report of which none of its recommendations were ever implemented (TRIAL, February 12, 2016). Thus, none of the families of the enforced disappeared persons received justice and reparations.

In 1973, the **Uruguayan** military superseded the elected Congress. The military leadership orchestrated Plan Condór (1973-1985) to suppress the leftist movement in Latin America's southern cone. Serious human rights abuses and repression occurred while being brought under absolute military control. Most of the communist cadres were either extrajudicially killed or bodies of certain disappeared persons were buried or they fled out of the country. Owing to political pressure, Julio Maria was elected as President in March 1985. In April 1985, the Commission of Inquiry into the Situation of Disappeared Persons and Related Events was set up to examine the abuses occurred during the military regimes (1973-1985). In December 1986, Uruguayan Parliament adopted a new law that granted impunity to all military officials, but stated that and political leaders were held responsible for human rights violations (United States Institute of Peace, 2003). The Commission submitted the report, but no official response was received for long.

As a result, the Commission for Peace was established in 2000 which worked for nearly two and half years (till April 2003). It investigated the whereabouts the fate of the 2,000 disappeared persons that had occurred during the military regime (United States Institute of Peace, 2003). The Peace Commission was supported by the Association of Mothers and Families of the Disappeared. And the report was submitted to the Supreme Court that included information on the fates of 38 enforced disappeared persons including 28 Uruguayan and 6 Argentinean. The Commission was dissolved in April 2003. The 14 Generals of the Uruguayan Army including Commander-In-Chief refused to accept the final report (TRIAL, 2016b). Even though, in 2006, former President Juan Bordaberry (1973-1985) was arrested in connection with the deaths of political opponents in 1976 (United States Institute of Peace, 2003).

In September 2009, a Reparations Law was promulgated to provide compensation to the families of the victims against the illegitimate acts done by the State security forces. Rather than receiving the reparations, the families and relatives of the Uruguay disappeared sought truth and justice (Buenos Aires Herald, May 21, 2015). The Association of the Mothers and Families of the Disappeared, forwarded 222 cases of disappeared persons (<http://www.linguee.fr/francais-anglais/traduction/association+des+familles+de+disparus.html>) against the Government's report of 39 cases.

The (alleged) perpetrators are to be evaluated from two perspectives: theoretical and practical. A perpetrator is a person who commits a heinous illegal, criminal or evil act and crime against humanity. A perpetrator is a suspected or alleged person. The person is to be identified and investigated and brought under the extent of law in the name of justice. In practice, perpetrator often commits serious human rights violations and abuses through excessive use of force during any movement, armed conflict or armed struggle.

The senior level of the (alleged) perpetrators often enjoy during the conflicting periods buying and selling weapons and ammunitions, extracting money for donation from people and their opponents. They often involve themselves in extrajudicial killings, enforced disappearances, search and seizure, forceful abduction, custodial torture and other cruel and inhumane degrading treatment or punishment in the name of informers, activists and supporters to terrorize the innocent civilian, entire society and the nation as a whole for not to go against them. Specially, all people of the countryside victimize all days and nights. The same (alleged) perpetrators appear again in the forefront as non-violent leaders during the transitional peace and transitional security. Thus, conflict affected people again victimize in the name of peace process.

The conflict victims are further victimized while the (alleged) perpetrators try hard to control truth-seeking commission for not providing true information, necessary resources and required human capitals during the transitional justice period. The (alleged) perpetrators often put restrictions on commission's officials to have a free access at their premises and destroy all conflict related evidences, documents and testimonies. Finally, all (alleged) perpetrators become scot-free (freedom) as a justice maker and non-violent leader. This is a true reality of all post-conflict countries where truth lacks proper access of identification, investigation and revealing. Victims and victims' families are denied of receiving justice forever. Thus, they further victimize in the name of amnesty and reconciliation.

4. Freedom of Perpetrator-Victim

The (alleged) perpetrators try hard to raise some restrictions to identify and investigate the enforced disappearances, fill up the ante-mortem data form, collect evidences and testimonies, exhume the dead bodies and conduct DNA test of families (reference sample blood collection) and human remains. Such (alleged) perpetrators often put limitations through security, legal and political dimensions. The families of the conflict victims, national and international human rights organizations and civil society activists intensify their voices against such moves and pressurize the concerned actors such as security forces to have a free access into their premises and investigate the cases of enforced disappearances. They also demand the government to provide enough logistic, official and technical supports and ask them to amend or draft the Commission to meet the needed legal and other regulatory measures. Some of the notable partially successful transitional justice countries are: Argentina, Bolivia, Chile and Peru. Large numbers of people were disappeared in **Argentina** (Heinz et al., 1999) during the Dirty War

(United States Institute of Peace, 1985). While the democratic Government was restored, the 13-member truth-seeking commission named National Commission on the Disappearance of Persons was established for a term of 9-month (December 1983-September 1984) to investigate the cases of human rights violations that had happened during coup d'état military Juntas (Note 11) (May 1973-June 1983) (Note 12). The Commission had a mandate to identify and investigate the whereabouts the fate of the disappeared persons, determine the locations of the disappeared bodies (Barkoukis, Leah and Charles Villa-Vicencio, August 2011) and submit a report to the President (TRIAL, 2016c). The Commission documented only 8,960 (Note 13) cases of enforced disappearances (Crenzel, 2008). However, large numbers of evidences and testimonies were demolished by the order of the then de-facto President General Reynaldo. It means, the highest levels of military official ordered its command to destruct the documents related to enforced disappearances that could have proven responsibility within the chain-of-command (United States Institute of Peace, 1985). Thus, many senior military officials (alleged perpetrators) got off innocent from the process of investigation and could not be brought under the legal action as prosecution.

The final report with 40,000 copies was published in 1985 along with depositions, testimonies and evidences of the past arbitrary arrest and detentions, custodial torture, disappearances and killings, but rejected by the highest military commands. Civilian President Raul Alfonsin nullified the blanket amnesty and the report was forwarded to the courts for legal actions. Six months passed without the report's execution owing to "amnesty" vs. "responsibility" tussles between the civilians and the security forces. Finally, the cases were transferred to civilian jurisdiction. Five out of the nine members of the former top military regime were convicted, and sentenced from four-and-a-half years to life imprisonment (Barkoukis et al., August 2011). While opposition member Carlos Menem succeeded Alfonsin in July 1989, he granted presidential pardons to all those convicted military officials under the subversive act trials. In 2003, Argentinean Chamber of Deputies cancelled the Menem's pardon. On June 14, 2005, the Supreme Court declared the amnesty law as unconstitutional (TRIAL, 2016c). The military regimes had been responsible for the enforced disappearances of 20,000 to 30,000 persons. All the enforced disappeared persons were killed. By 2010, approximately 50 perpetrators were prosecuted (Barkoukis et al., August 2011).

The reparation was established in 1994 only drafting its law. Some 11,000 victims' families of Argentines applied to the relevant authorities and received up to US \$200,000 as a financial compensation for the loss of the loved ones. A total of US \$3 billion was granted for families of the enforced disappearances and additional \$3 billion for victims of unlawful detention from 1998 to 2004 (Wright, December 2006). The reparation includes economic assistance, study grants, social security measures and employment. The Government publicly apologized to the victims' families of those who were disappeared.

The **Bolivian** National Commission of Inquiry into Forced Disappearances (NCIFD), the first Latin

American truth-seeking Commission (October 1982-July 1984) possessed a limitation on the cases such as torture, arbitrary arrest and detention and violations of property rights. Only the cases of enforced disappearances and killings were introduced under the scope of its identification and investigations. The Commission concentrated its work for the period of military Junta dictatorship (1964-1982), General Hugo Banzer's (1971-1978) and General Luis Gracia Meza Tejada's (July 1980-August 1980) regimes (United States Institute of Peace, undated). In 1964, a military junta overthrew the elected President of Revolutionary Nationalist Movement, but the military finally ended appointing a civilian President in 1982. Grave human rights violations and serious systematic power disorders were the prime target to investigate on the truth-seeking cases. The Commission was composed of 8-member headed by a low-rank official, Under-Secretary of Defense. Two members were included from the Human Rights Permanent Assembly and the Association of Relatives of the Disappeared Detainees and Martyrs for National Liberation of Bolivia (TRIAL, 2016d).

A total of 155 disappearances complaints were registered. The actual numbers could be much higher. It received complaints along with evidences, testimonies and photographs from the victims' families. However, the Commission was dismantled and all the collected materials and testimonies seized before completing its investigation in the mid of 1984. The whereabouts of the Commission's documents and materials (Hayner, 2011) are still unknown. It happened while the elected President Hernán Siles Zuazo (<http://www.nvdatabase.swarthmore.edu/content/bolivian-president-stages-hunger-strike-economic-reform-1984>) (Note 14) faced a severe economic crises: hyperinflation, mass unemployment and general strikes. The Commission did not receive political and moral supports from the Government and it had a limited mandate to investigate into the deaths and disappearances only, not into other human rights violations-abuses and crimes against humanity. Besides, the Commissioners did not get an access to go into the security force premises for the collection of required information, data and testimonies. Owing to lack of technical knowledge and forensic experts, the dead bodies were not correctly exhumed (United States Institute of Peace, October 28, 1982).

In the Trials of Responsibility, former dictator general Meza and 55 of his former associates were convicted of personal basis starting from 1984-1993. Meza was convicted for 234 years into the jail over 36 different charges. However, he has been serving for 30 years as the maximum sentence under Bolivian law (Human Rights Watch, December 1992). General Meza was extradited to Bolivia from Brazilian exile (United States Institute of Peace, October 28, 1982). He was prosecuted based on the Commission's report, but the Commission never furnished and published a final report on enforced disappearances. No reparation was provided to the disappeared persons' families. Rather than an impartial judgment, prosecution had been conducted owing to political and other vested interests.

In the case of **Chile**, President Salvador Allende was removed from power and General Augusto Pinochet (1973-1989) captured the State power. To protect his military rule, Pinochet tried hard to annihilate the activists of the opposition parties or groups. Therefore, he was accused of numerous acts

of human rights violations-abuses in his 16 years of authoritarian regime. The Pinochet dictatorship ended in 1989 when he was defeated by Patricio Aylwin in the elections. President Aylwin established Chile's National Commission for Truth and Reconciliation (May 1990-February 1991) to investigate the human rights violations-abuses, mainly unlawful murder and enforced disappearances that occurred during the Pinochet regime. The Commission comprised 8-Commissioners: 6-men and 2-women following the Presidential decree (United States Institute of Peace, October 2002).

The final report of the Commission documented a total of 3,428 victims consisting 979 enforced disappearances, 2,298 political killings and others. Most of the enforced disappearances were committed during the Pinochet regime between 1974-1977 (TRIAL, 2016). It is to be noted that National Intelligence Directorate (DINA) was responsible for such political repression during the entire period. The Commission published a report with the victims' details including name and story of each family of the enforced disappeared person. Similarly, it recommended for the creation of an independent and autonomous body for locating and identifying the remains. It also recommended for psychosocial care and education to the children of the victims. Owing to the implementation of the report, Pinochet was arrested in 1998 in Great Britain, later he died in December 2006 (United States Institute of Peace, 2012). In 1991, President Aylwin publicly apologized to the families of the victims pursuing the recommendation of the TRC.

The report recommended a pension for life for the families of the victims in the course to providing justice. Even children of the victims received a lump sum US \$17,000 who were under age during the distribution of the pension. The pension was distributed among the close family members of the victims: (i) 40 percent for the surviving partner, (ii) 30 percent for the parents, (iii) 15 percent for each child until age 25 or entire life if he/she is disabled and the like (Rubio-Marin, May 2011). Following the recommendation, the National Corporation for Reparations and Reconciliation (NCRR) was formed. It reviewed all pending cases left by the TRC (Cuevas et al., June 2002).

The Maoist Shining Path began an uprising against the **Peruvian** military dictatorship and socio-economic inequalities in 1980. In 1982, Peruvian Government began an armed struggle against the Maoist Shining Path. Massive human rights violations-abuses occurred. The Shining Path became weak after its principal leader Abimael Guzmán was captured in 1992. The internal armed conflict finally ended while President Alberto Fujimori was ousted from office in November 2000.

In December 2000, the caretaker government established a Truth and Reconciliation Commission for the term of 25 months (July 2001-August 2003). The Commission was formed to investigate into the extrajudicial killings, disappearances, and to find out the numbers of displacement and other violations happened during 1980-2000. It was composed of 12-commissioners including two women with five regional offices (United States Institute of Peace, 2004).

The total number of extrajudicial killing was between 61,007-77,552 in addition to the hundreds of thousands of displaced persons. It is to be noted that the Shining Path was responsible for 54 percent

killings (http://www.insidejustice.com/intl/2006/10/20/peru_guzman/). Among the identified 8,558 enforced disappeared persons, only 979 families of the victims registered complaints at the TRC (United States Institute of Peace, 2002). The Commission published a report with the names and the story of the enforced disappearances of each victim.

After receiving the final report of the TRC, in November 2003, the elected President Alejandro Toledo publicly apologized on behalf of Government to those who were victimized during armed struggle (Justice in Perspective, 2012a). Toledo publicly said, "I apologize, on behalf of the State, to those who have suffered: for the dead, the missing, the thousands of displaced persons, disabled, tortured, for the undocumented, in general, all victims of violence and terror" (United States Institute of Peace, 2004). The Civil Anti-Terrorism Court sentenced most of the prominent leaders of the Shining Path to life imprisonment in October 2006 (United States Institute of Peace, 2004). In 2004, the Constitutional Tribunal confirmed the right to know the truth, whereabouts the fate of enforced disappeared persons. Arrest warrants against more than 50 military officials in connection with the extrajudicial killings and disappearances were issued and taken them into the custody (US Department of State, February 28, 2005).

Alberto Fujimori is currently on trial in Lima for multiple charges such as misuse of authority, murder, disappearances and sanctioning of death squads. He has been sentenced for 25 years for unlawful killings of 25 people in the military death-squads. The Court sentenced him to eight years in prison and fined him US \$1 million. He has two additional charges of corruption and abuse of power (The Japanese Times, January 9, 2015). He was first sentenced to 6 years imprisonment in December 2007. He first fled to Japan in 2000, but extradited in 2007 from Chile. He is reported to be Peru's most expensive prisoner that costs US \$157,000 per year (The Japanese Times, January 9, 2015).

A High-Level Multi-sector Commission was created to implement the TRC's recommendation related to national reconciliation and reparations for peace in early 2004. The National Council for Reparation was established in October 2006 but it began registering reparations for the victims in early 2008 only. The beneficiaries included 200,000 people from 530 communities. The TRC was the first in Latin America which conducted public hearings among the populace. The public hearings received 318 cases in which 15,220 testimonies were registered; which reported that 40,000 people were killed and over 6,000 were forcefully disappeared between 1980-2000 (Justice in Perspective, 2012a). Between 2002-2013, a forensic team was formed which conducted 495 exhumations of the mass or individual graves. The exhumation recovered the remains of 2,478 persons. Out of 1,483 persons' remains, only 89 percent (1,317) were returned to their families or relatives. The rest of the remains were not identified by the victims' families and relatives.

The Commission outlined the need of reparations to the poor families of the victims. A total of 15,357 families of the enforced disappeared persons received the compensation between 2011-2015 in which US\$ 10,000 was provided to each conflict victim family (United States Institute of Peace, 2004). The

report recommended physical and psychological rehabilitation and access to education for the victims' children. Implementation of education and rehabilitation programs reported to be slow.

5. Freedom at Victim

In **Nepal**, the enforced disappearances had occurred during 104 years of authoritarian Rana regimes, but it started to be recorded immediately after 1951 under democratic rules where Ram Prasad Rai, a Nepali Congress activist had been the first victim of enforced disappeared person (Adhikari, September 3, 2011). Rai protested against the Delhi Tripartite (Note 15) Agreement conducted from February 1-8, 1951. Sukhdev Singh was arrested in 1956 from Saptari, but disappeared since then (http://www.en.wikipedia.org/wiki/List_of_missing_people_from_Nepal).

A total of 27 people were forcefully disappeared during the Panchayat era (1960-1989). Most of them were offensive with the monarchy and demanding the restoration of multi-party democracy (INSEC, August 2011) (Note 16). Similarly, seven persons (INSEC, 2011) (Note 17) were forcefully disappeared after the bomb explosion on June 20, 1985 (The New York Times, June 21, 1985) (Note 18). Out of seven disappearances, five people were reportedly abducted, murdered and their bodies were clandestinely buried on the suspicion of bomb attack. It is to be noted that all enforced disappeared persons were males.

Immediately after the restoration of democracy in Nepal in 1990 (post-Panchayat period), the then Prime Minister Krishna Prasad Bhattarai established a commission of Inquiry to Locate the Persons Disappeared during the Panchayat period (1961-1990). The Commission was quickly dissolved due to the controversy on the process of appointment under the Panchayat Constitution 1962. PM Bhattarai again appointed a 4-member committee comprising Basudev Dhungana, Dr. Sachche Kumar Pahadi, Prakash Kafle headed by Surya Bahadur Shakya on July 31, 1990 (United States Institute of Peace, 2011) stating the changed political context. The Commission was formed to identify and investigate the detention of those who had disappeared, and to identify additional victims. The report was submitted to PM Bhattarai on April 21, 1991 (INSEC, August 2011a). The report was made public in 1994 as a result of massive pressure from the civil rights activists, civil society organizations and individuals. The Commission formally identified a total of 35 persons disappeared in which five of them were killed. The remaining enforced disappeared victims were declared unknown (<http://www.webfactory.co.za/csvr/csvr/asia-a-australasia/nepal/commission-of-inquiry-to-locate-the-persons-disappeared-during-the-panchayat-period.html#nepal1>).

Bhuwan Lal Thapa Magar was arrested in 1992 from Doramba VDC in the Ramechhap District. He was last seen on May 23, 1992, but his whereabouts since then is still unknown. An engineering student Prabhakar Subedi from Butwal Municipality-6 was arrested by Nepal Police at Ratnapark, Kathmandu in the broad-day light on June 25, 1993 while participating in a protest program organized by the CPN (UML). Photographs of Subedi being dragged by the police were published by several media, but it is

shameful that his family members' petition was dismissed by the Supreme Court's verdict stating the lack of evidence on December 1, 1998 (INSEC, August 2011a). Even the court was seen insensitive and heavily influenced on Subedi's case as he was from a poor family background from the countryside.

On February 1, 2005 at 10 AM, the former King Gyanendra declared a State of Emergency, suspended Parliament, controlled telecommunication and deployed the Nepal Army to take control of all State institutions including private media houses sacking 7-month old Sher Bahadur Deuba Government. Deuba was termed incapable and insincere once again to restore peace-security and to hold parliamentary elections in the country (Pathak, 2005). King's regime continued to suppress the political parties and civil rights activists and institutions. Following this, the then Constitutional-Parliamentary parties and the armed insurgent CPN (Maoist) signed the 12-point understanding on November 21, 2005 and reached a conclusion to go from the Kingdom to the Republican Nepal and make a new constitution through the Constituent Assembly. Finally, the then Government of Nepal and the CPN (Maoist) signed the Comprehensive Peace Accord (CPA) on November 21, 2006.

The identification-investigation of the enforced disappeared persons is a serious human rights violation in Nepal where Commission of Investigation on Enforced Disappeared Persons (CIEDP) is presently working. Moreover, the CIEDP pursues victim-centric approach, normally called freedom at victim. There are numbers of reasons how the CIEDP performs its tasks taking the victim-centric approach. First, the CPA has given an utmost importance to dig-out the truth on the whereabouts of the enforced disappeared persons and to ensure justice to the families of the victims and to end the culture of impunity who are involved as (alleged) perpetrators in the process. They are:

- 5.2.3: The CPA agrees to make public the information about the details of victims who were disappeared by both sides. The families of the disappeared persons shall be informed within 60 days from the date on which this Accord has been signed.
- 5.2.4: The CPA permits to maintain the peace in the society carrying out relief work for, and to rehabilitate people—victimized and displaced by the war, constituting a National Peace and Rehabilitation Commission to perform the business related to it.
- 5.2.5: The CPA calls to constitute a High-level Truth and Reconciliation Commission in order to investigate the truth about those who have seriously violated human rights and were involved in crimes against humanity to create an reconcile environment in the society.

However, the CPA contains no detailed guidance on how to form each of these truth-investigative bodies and their specific mandate. The truth-seeking autonomous bodies in many ways are the most ambitious commissions (Cochran-Budhathoki et al., September 1, 2007). The Preamble of the CIEDP and TRC Act 2014 state that CPA establishes “a high level Truth Commission, in mutual understanding, understanding to conduct investigation about those who were involved in gross violation of human rights at the time of the conflict and those who committed crime against humanity and to create the

situation of reconciliation in the society”. Likewise, the article 3 of the Act 2014 states that CIEDP is an independent, impartial and accountable separate high level Commission.

Second, eight years, two months and 21 days after the Government of Nepal and the then insurgent Communist Party of Nepal (Maoist) signed the Comprehensive Peace Accord in November 2006, the CIEDP and the Truth and Reconciliation Commission (TRC) have formally been formed on February 11, 2015. CIEDP has its own Charter. The Charter states that CIEDP was constituted by the Government of Nepal based on the recommendation submitted by the CIEDP and TRC Recommendation Commission, headed by former Supreme Court Chief Justice Om Bhakta Shrestha. The five member Recommendation Commission was formed under the CIEDP and TRC Act 2014.

Third, five members Commission headed by Mr. Lokendra Mallick, and including Mr. Bijul BK Dulal, Ms. Nar Kumari Gurung, Mr. Ai Bahadur Gurung and the author himself was formed. The position of the Chairperson of a CIEDP “Truth Commission” is parallel to the Chief Justice and members are equivalent to the Justice of the Supreme Court in Nepal. In terms of composition of the CIEDP, Chairperson Mallick belongs to the Tarai-Madhes community who has 40-years’ long experiences working as a Judge in the courts. Member BK Dulal is from the Dalit community who previously worked as Chairperson of the National Dalits Commission. Member Nar Kumari represents an indigenous woman group, who has done LLM on gender justice and women rights. Another member Ai Bahadur is also from the indigenous nationality who has a long practice as a human rights lawyer. The other member is the author himself who has done a PhD on Conflict Management and Human Rights and has been working as a Research Professor of Human Security. Besides, he has published more than 100 journal articles related to conflict transformation, peace and harmony, human rights, human security, transitional justice and the like.

Fourth, the objectives of the CIEDP is to examine, document and evaluate a complete truth of cause, nature and degree of enforced disappearances and crime against humanity (Note 19); invite complaints registration from families of the victims and others and provide *Nissa* or *Bharpai* (acknowledgement receipt) to them; investigate ante-mortem data on the whereabouts of enforced disappeared persons or victims and provide post-investigation information to the victims’ families and others; assist in restoring or reintegrating the families of victims’ dignity in the society testifying disappeared person’s belongings, evidences, and testimonies; and recommend reparations to the victims’ families and to end impunity prosecuting the (alleged) perpetrators. Most of these objectives are set to identify and determine the truth, justice and reparation during the course of armed conflict (February 13, 1996-November 21, 2006) in Nepal.

The article 2.n of the CIEDP and TRC Act 2014 state that “Armed Conflict” means the armed conflict carried out between the State Party and the then Communist Party of Nepal (Maoist) from February 13, 1996 to November 21, 2007. During the said period, a total of 17,700 people were extrajudicially killed (Asian Human Rights Commission, February 15, 2012) where the Government was responsible for 63

percent and the Maoists 37 percent. The Transitional Justice Reference Archive (TJRA) recorded over 2,000 incidents of killings (UNHR, October 8, 2012). On *Comprehensive Peace Accord: Human Rights Status 2006-2011* of National Human Rights Commission stated that 78,689 people were involuntarily displaced (Pathak, December 2011). No consistent data on enforced disappeared persons are recorded: 1,530 in Ministry of Peace; 1,348 in International Committee of Red Cross; 1150 in Informal Sector Service Center; and 970 in National Human Rights Commission which are serious violations of International Human Rights Law and International Humanitarian Law (Pathak, March 8, 2008).

Fifth, the working modalities lead into several phrases: (a) Internal Management: office set-up, formation of terms of reference, drafting of regulation, design and approval of research directives, development of training materials and manual to secretary and computer operator of each Local Peace Committee, development of exhumation guidelines and so forth; (b) Preliminary action: announcement of complaints date and its registration process is ongoing for 60 days starting from April 14, 2016. All complainants shall either visit the Local Peace Committee office at their respective district headquarters or CIEDP central office, Kathmandu. In a month period, 85 percent (out of 1,530) families of the victims have already register their complaints. There have been a high hope and interest of the families of the enforced disappeared persons with the Commission believing that the much awaited justice prevails soon; and (c) The preliminary investigation on the complaints have already started.

Sixth, the CIEDP is in a position to initiate a detailed investigation sending researchers at each victim's house to collect Ante-Mortem Data for which a 25-page long victim-centric justice form has already been developed. Based on the information provided by the families of the victims, the detailed investigation moves ahead identifying witnesses, evidences and testimonies and frequently interrogating the (alleged) perpetrators to end impunity. Furthermore, public hearing in the countryside shall be conducted to understand the complex cases of enforced disappearances. If the families of the victims and others identified the burial sites of the disappeared persons, the exhumation process shall also be carried out by the team of forensic experts such as archeologist, anthropologist, post-mortem doctor, pathologist and the like. Since the human remains whatever might be found through exhumation may not be recognized by the concerned family, reference samples of fresh blood (mainly from parents, son-daughter and brother-sister) shall also be collected from the possible families of the disappeared and tested in Nepal. The disappeared person's remains shall be sent to foreign country for the DNA test. When the DNA test of the fresh blood and the remains shall be completed, the computer system will be used to match the DNA and to recognize the concerned family. Then the remains shall be delivered to the victim's family to conduct the last rites and rituals. Finally, the report along with the name of the perpetrator(s) shall be submitted at the Office of the Attorney General to file a case at the Special Court. A complete report with recommendation of reparation shall be delivered to the Prime Minister of Nepal in the presence of Peace Minister.

Seventh, as enforced disappearance is a serious human rights violation-abuse, the provision of amnesty

and reconciliation shall never apply for the Commission of Investigation on Enforced Disappeared Persons. The article 2.j of the CIEDP and TRC Act 2014 state that serious violation of human rights means murder, abduction and hostage taking, disappearance of persons, causing mutilation of disablement, physical or mental torture, rape and sexual violence, looting, seizure, breaking or arson of private and public property, forceful eviction from house and land or displacement by any other means, any types of inhuman act committed against international human rights or humanitarian law or other crimes against humanity.

Last, the CIEDP is fully aware and committed to comply with the landmark directives of the Supreme Court regarding the victim's rights and the rights to enforced disappearance verdicts of February 26 2015, January 2, 2014 and June 1, 2007. The CIEDP also presses the Government of Nepal to amend the CIEDP and TRC Act 2014 respecting the verdicts of the Supreme Court.

On behalf of CIEDP, the author himself has requested the UN General Secretary and Deputy General Secretary and European Union Member States, the United States Government and other international bi-and-multi-lateral donors to support the CIEDP. Besides, the CIEDP has already forwarded the draft to proclaim the Disappearance Criminalize Act soon from the Parliament to punish the perpetrator. Thus, CIEDP wishes to be a role model in terms of victim-centric transitional justice system in the world if the concerned actors freely encourage, cooperate and assist the CIEDP's duties and responsibilities. Insecurity shall be a major cause of hindrance to accomplish the freedom at victim's tasks as the CIEDP has been working between the armies. Security forces try to impede collecting complaints from the complainants (families of the victims). The experiences show that the security forces at first adopt the threat; second, scowl; and then try to develop informal relations with concerned officials to get detailed information of the complainants.

6. Conclusion

Enforced disappearance arises when a person is arrested, abducted and solitarily confined or detained against her/his will and deprived of her/his liberty either by security personnel (Government) or an organized group especially during the armed conflict. The victims' families or relatives demand to seek truth of the loved disappeared ones and in many cases their memorial set up and monetary reparations. In most of the cases, the disappeared persons are at high risk of custodial torture, search and seizure, cruel, inhumane and degrading treatment, a risk even greater when the person is detained outside the purview of formal detention centers such as prisons, police stations or custodies. Enforced disappeared girl-children's and women's cases are more severe as they are easily exploited.

Regarding the women victims, it is reported that 42.9 percent are the victims of sexual violence in East-Timor, but 90 percent in Sierra Leone. Women recorded 100 percent of cases of sexual slavery and rape, and 38.5 percent of cases of sexual abuse in South Africa. In general, the evidences and testimonies recorded that 40 percent women were victimized by heinous sexual violence (Nesiah,

2006).

Transitional justice mechanisms should be a gender-sensitive approach (International Center for Transitional Justice, March 2015). Women become the primary breadwinners (treasurer) for their families (children and senior citizens) in absence of the principal actors (men or enforced disappeared persons). The conflicting actors often choose a principal person (treasurer) of the household and made him/her disappeared. The wife of the disappeared person is informally recognized as half-widow (Note 20) and single (woman) mother in the family and society.

In the case of Nepal, if a wife is disappeared, a man can easily go for a second marriage, but most of the women do not go for a second marriage for the sake of their children and parents or remembering that their husbands shall arrive one day alive. Most of the children are deprived of going to schools due to their poor economic condition and absence of their fathers or older brothers. The children who go to schools are also mistreated or ill-treated and humiliated by their own friends sometimes saying, children of the disappeared father or mother or asking, “where are your father or mother”. Notwithstanding, girl children more suffer from village to town and many of them suffer from degrading treatment too.

Disappearance entails violation and abuse of many fundamental human rights: the right to liberty, the right to personal security, the right to humane treatment, freedom from torture and other cruel treatment, the right to a fair trial, the right to legal counsel, right to equal treatment before and under law, the right to receive correct information, and the right of innocence unless proven guilty by the national and international human rights instruments.

Enforced disappearance creates shock, uncertainty and fear in family members, relatives, wider community, society and nation as a whole. Most of the truth commissions that have been formed to provide justice to the victims and their families have concentrated their jobs to protect their lords (perpetrators) in the name of amnesty and reconciliation. It happens while the commissioners are nominated, selected and appointed from the (alleged) perpetrators' near and dear ones rather than choosing independent, capable, honest, committed, and integrity-truthfulness experts. The legal measures such as Act and Regulation are often developed or amended on the principle of “what happened has happened, let's forget and forget all”.

Thus, the truth commission are often established to fulfill the zest and zeal for inhumanous quest to the (alleged) perpetrators which is no less than social injustice, moreover, socio-political crime—crime against humanity. The world introduces the crime against humanity in the name of transitional justice. The author is afraid whether the transitional justice shall only be the concept to ensure freedom to the (alleged) perpetrator repressing the voices of the victims. If that happens, it is a serious perversion of fundamental human rights and humanitarian law. Whether man be black or white, rich or poor, powerful or powerless, educated or illiterate, job-holder or jobless, resource-full or resource-less, the

world needs to be out from inhumanous quest as “all men are born free, grow-up inherently and work competitively”.

World's experiences show that transitional justice is a political issue which uses for the protection of perpetrators and neglect the voices of the victims or families of the victims. Transitional justice is a part of human rights and the human rights is an old-cosmetic fashion now. This fashion has been able to collapse the world's ideology, but introduce severe identity-resource control crises and religious superiority. Human beings are alarmed at the huge resources that go into military spending and the development of nuclear weapons, while a large section of the world's people go without their basic needs met (http://www.secure.avaaz.org/en/petition/Global_Disarmament_Now_1/?pv=28). Thus, human rights cannot settle, manage, resolve and transform humanous quest. The world shall never be secure from the armed violence or war if children, men and women have no security in schools, at their homes and in their jobs. Therefore, humans need to talk, work and apply human security (Pathak, March 8, 2014) for all. The human security not only protects the human beings, but the entire universe (Pathak, October 1, 2013). Thus, human should pursue and comply with the human security as universal, indivisible, inherent and non-derogatory rights and also to duties which shall truly follow the humanous quest for truth, justice and reparation for dignified life, liberty, security and dignity as a whole, man to universe.

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Notes

Note 1. Girl child and woman often suffer from cruel, inhumane and degrading treatment or punishment during interrogation.

Note 2. “Perpetrator” means a person involved in a crime committing gross violation of human rights in the course of armed conflict and the term also includes a person giving order to commit such crime as well. CIEDP and TRC Act 2014.

Note 3. “‘Victim’ means a person dead or physically, mentally, or sexually or economically caused to suffer injury or loss...as a result of serious violation of human rights...” Article 2 of the Commission of Investigation on Enforced Disappeared Persons and Truth and Reconciliation Act 2014.

Note 4. The Amnesty Law is recognized as the Charter for Peace and National Reconciliation which was proposed by Algerian President to end the Algerian Civil War. The referendum on the Charter was held on September 29, 2005 which was passed 97 percent and was implemented as law on February 28, 2006.

Note 5. Except those involved in mass murder, bombing attacks on public installations and rape.

Note 6. Chega means enough in Portuguese language.

Note 7. Jammu and Kashmir Public Safety Act, Jammu and Kashmir Disturbed Areas Act, and the Armed Forces Special Powers Act, 1990.

Note 8. Gandhi was killed as a retaliation of his armed move against Tamil Tigers.

Note 9. Rather than impartial, independent and autonomous commission.

Note 10. Milton Obote became Prime Minister from 1962 to 1966, President from 1966 to 1971 and again President from 1980 to 1985 and Idi Amin (1971-1980).

Note 11. A junta (military junta) is a Government led by a committee of military leaders, known as board of directors. The word junta derives from the Spanish which meaning committee or meeting.

Note 12. The leftist parties initiated an armed struggle against the military dictatorship that resulted extrajudicial killings, disappearances, secret detentions and tortures of thousands of civilians.

Note 13. The commission estimated the real numbers range between 10,000 and 30,000.

Note 14. He served as his country’s constitutionally elected President twice (1956-1960) and (1982-1984). Bolivian President stages hunger strike for economic reform, 1984.

Note 15. Indian authority, Rana and Nepali Congress.

Note 16. There were: Rudra Bhattarai and Kesar Bahadur Khadka from Ramechhap; Kalyan Rai, Dakman Tamang, Pasang Tamang and Lal Bahadur Rai from Panchthar; Baikuntha Adhikari and Sete Tamang from Dhading; Tika Ram Adhikari, Ramhari Dahal, Pahalman Sarki, Maheshwor Chaulagain and Govinda Prasad Dahal from Okhaldunga; Shri Harsa Khanal from Chitwan; Harsa Bahadur Pradhan from Lamjung; Shankar Prasad Sharma from Salyan; Jit Bahadur Rana from Syanja; Ganesh

Raj Gautam from Banke and Balabhadra Joshi from Baitadi. Pant, Dipendra Prasad, Prashannata Wasti and Nir Lama.

Note 17. Similarly, seven persons namely Padam Bahadur Moktang, Ishwar Chandra Lama, Dr. Laxmi Narayan Jha, Satyanaran Jha, Surya Nath Yadav from Dhanusa and Dilip Chaudhary and Shaketa Chandra Misra from Saptari.

Note 18. Five bombs exploded at King Birendra's Royal Palace, the National Assembly, the main Government office complex and a hotel lobby where seven people were killed in the first major terrorist attack in Himalayan country Nepal injuring 16 others.

Note 19. The Crime against human dignity is a serious attack on human dignity and human security or inhumane act committed against international human rights, humanitarian law and national human rights instruments. It generally happens by extrajudicial killing/murder, abduction and hostage taking, enforced disappearance to person, physical and mental torture, rape and sexual violence and looting, seizure, breaking or arson of private and public property which are clearly stated in CIEDP and TRC Act 2014.

Note 20. Whose husband is forcefully disappeared, but family neither received sash nor lash (alive nor dead body).