



5-2018

Children and Transitional Justice in Nepal: Entrenched Violence and Marginalized Perspectives

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Recommended Citation

Billingsley, Krista Elizabeth, "Children and Transitional Justice in Nepal: Entrenched Violence and Marginalized Perspectives." PhD diss., University of Tennessee, 2018.
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(Original signatures are on file with official student records.)

**Children and Transitional Justice in Nepal: Entrenched Violence
and Marginalized Perspectives**

A Dissertation Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

Krista Elizabeth Billingsley
May 2018

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Acknowledgements

I am very grateful for the support I received during this process. Thank you especially to my interviewees. Your courage and tenacity are awe-inspiring. I am thankful for your kindness and willingness to support my research.

My research assistants were amazing, resilient, and insightful. Without them, my research would not have been possible. Pooja, you are my sister forever. I miss you so. I am certain that you will continue to do amazing things. Thank you for supporting me on this journey. Ajit, thank you, brother, for inviting me into your home and helping me to conduct research in Bardiya. I am also very thankful to Pooja's and Ajit's families for inviting me into their homes and lives in addition to supporting my research. Abhishek, you are my big brother, and I am very appreciative for your guidance. Bandana and Asmita, thank you for your kindness and support. I am grateful for the relationships I developed with all of my research assistants. Thank you also especially to Sharad Simkhada for your time, friendship, encouragement, and guidance.

I am thankful to numerous aunts, uncles, brothers, sisters, friends, and colleagues in Nepal that shall remain unnamed for sharing your homes, food, tea, coffee, laughter, and tears with me. You brought me great comfort while I was away from home and helped me to feel as if I have a home in Nepal. Thank you for sharing your time and helping me feel as if I belong. I will always hold you in my heart.

My dissertation committee has supported me relentlessly, and I am so grateful. Tricia Redeker Hepner, my adviser, provided enormous encouragement throughout my time at the University of Tennessee, answering my continuous questions, writing letters of support, and editing grant proposals, publications, and my dissertation. I am very thankful for you, your support, and your kindness. Thank you for believing in me and guiding me to achieve my dreams to become an anthropologist and scholar. I can't imagine anything better. Thank you to all of my committee members: Raja Swamy, Bertin Louis, Jr., Michael Palenchar, and Rebecca Klenk. Raja, thank you for sharing your vast knowledge of communism in South Asia and insisting I consider broader frameworks. Bert, as I now call you, thank you for your support through this journey. It has made me feel as if I'm not alone. Michael, your kindness and availability to answer questions about research methodology, returning from fieldwork, and the job market have been such a relief. Thank you for your continual encouragement. Rebecca, you have continuously guided me in better directions, and I am so appreciative of your support.

I am thankful to many people at the University of Tennessee. A special thank you to De Ann Pendry for advocating for graduate student teaching and especially for your kindness during my father's illness and death as well as your continual support during my journey through graduate school. As my father was dying, Hugh Tuller took over two of the discussion sections that I was teaching. Thank you, Hugh, for your compassion and kindness. I will always be grateful for your willingness to give up your own time, so that I could witness my dad's last days, and ultimately, his last breath. Thank you to Eliza Guyol-Meinrath Echeverry for listening to me and helping me work towards solutions. I am grateful to numerous graduate students in the anthropology department at the University of Tennessee. Your work to make our department better and graduate education more accessible, in addition to your kindness towards and support of me, are greatly appreciated. I am thankful for and enjoyed working with Kendy Altizer, Megan Kleeschulte, and Eric Schweickart through the Anthropology Graduate Student Association this academic year as well as Martin Walker and Christine Bailey organizing the 2018 Disasters, Displacement, and Human Rights Conference. Thanks also to Alexandra Lopez, Frankie West, Jenna Watson, Kaitlyn Styles, Tiffany Saul, Jen Green, Kayla Davis, Meagan Dennison, and faculty member Amy Mundorff for your encouragement. Thank you to department chair Alex Bentley for your generosity with your time this academic year. Many thanks to everyone in United Campus Workers-Campus Workers of America for supporting the advancement of social and economic justice at the University of Tennessee. Thank you especially to my students. You kept me in graduate school the first few years during particularly difficult times and continue to inspire me to stay in academia. A special thank you to Sarah DePew, Sydney Franklin, Courtney Clough, and my entire 'Youth and Conflict' class for your kindness during the loss of my father.

I am tremendously grateful for the generous financial support that made my graduate education and dissertation research possible. Thank you to Fulbright-Hays for your support through a Doctoral Dissertation Research Abroad Fellowship. I am also very appreciative of the Fulbright office in Kathmandu as well as the other Fulbright students and faculty for their encouragement while I was in Nepal. Thank you especially to Laurie Vasily, Mily Pradhan, and Yamal Chandra Rajbhandary. Many thanks to Ben Linder for letting me vent and to Miranda Weinberg for your support. Thank you to the Wenner-Gren Foundation for awarding me a Dissertation Fieldwork Grant. Many thanks to the Department of Anthropology at the University

of Tennessee for the teaching opportunities and financial support of my dissertation completion, conference travel, and research. Thank you also to Caela O'Connell for hiring me as your research assistant. I am grateful to the students, faculty, and staff at the Center for the Study of Youth and Political Conflict for their financial support of my research and conference travel in addition to their generosity during the loss of my father. Thank you especially to Brian K. Barber and Clea McNeely for helpful suggestions during the preliminary phase of my dissertation research. I am also thankful for the financial support of my preliminary research through the W.K. McClure Scholarship for the Study of World Affairs, funding from the Graduate School, and the GTA@OIT Grant I received to improve my online teaching methods through the Office of Information Technology. I am grateful for the financial support of my language training through a Foreign Language and Area Studies Fellowship and scholarships from the Summer Nepali Language Program at Cornell. Many thanks also to Kathryn March, David Holmberg, Shambhu Oja, and Banu Oja. Thank you to Pitamber Bhandari for your guidance as I began my dissertation research.

I am very thankful for the support of my family and friends. I have felt the weight of not being fully present in my relationships—always distracted by graduate school and all that comes with it. I am sorry for my absence during these past few years, and I am hopeful this marks the beginning of new adventures for us.

My husband, Heath Kirby, was very supportive to me throughout this process. I love you. Thank you for editing my writing, living in Nepal, and making me laugh. I can't imagine how I could have completed this journey without you. Till now, you have only known me as a PhD student. I look forward to our journeys beyond this period of our lives and am incredibly grateful for your love, kindness, generosity, support, and understanding.

I have been loved and supported especially by the Pritchard (Mom, Dad, Clint, Caleb, Raelon) and Heaver (Leah, Ben, Riley, Tyler, Parker) Families, the Mann Family (Mickettric, Phil, Amy, P.J., Hayden), the Schneider Family (Scheree, Chris, Hailey, Collin), Desiree Denning and Family (Mamie, Papie, Tonya, Elyse, Bella, and Rietta), Mike and Dana Kirby, Deanna and Ben Bailey, Joanna Trease and Kristen Whidden, Barry and Deb Baker, Leighann Larson, Angelina Thompson, Keirsten Jameson, Janie Cobb, Nicole Eggleton, Amanda Mendenhall, and Elliot Smith. I am very grateful for and love all of you! Thank you to Jason Stone(ji) for your friendship and continual encouragement. We're doing great! My husband's

parents, Lanny and Kay Kirby, are always ready to help us with anything. I appreciate and love you both very much. My husband's grandmother, Lena Mai Davis, always provided me a safe space to vent, snacks to eat, and told some of the funniest stories I've ever heard. I also appreciate Heath's brothers (Ethan, Torrey), cousins, aunts, uncles, Fran, and Walter. I am thankful to Shay and Valerie Loftis for their kindness, for treating me like family, and for forcing me to have fun regularly. Thank you to Susan Elkins for supporting me and showing me a woman from Gainesboro could pursue a career in academia. Many thanks to my DOT sisters, especially Jayanni, Gaby, Matilda, and Abby. Thanks to Robert, Matthew, Dixon, Caleb, and Lucious for going out to eat with me on Friday nights in Knoxville. Our shared laughter was often what kept me sane during difficult times. I am very grateful for your support. Many thanks to Charles Ralph Holland Memorial Library in Gainesboro and especially to Kate and Beverly for their support. Thank you to the Holland Family, the Henson Family, the Kirby Family, the Cain Family, the Crowder Family, the Spencer Family, the Montgomery Family, the Green/Smith Family, the Hix Family, and the Draper Family for your encouragement. Thank you also to Kate Voss, Brandy Bischoff, and Martin Scott for your support and kindness. I will always be thankful to the fellowship that saved my life. I am grateful my mother, Mary Billingsley, taught me to question patriarchy, believed in me, and encouraged me to continue my education. I love you. Thank you to my Pensacola community. I am especially grateful for the support I received from the administrators, faculty, staff, and students at the University of West Florida. I miss you all! Thank you to Alfred Cuzán and Peter Metarko. Many thanks to M. Lal Goel for your encouragement and also to your family in India for hosting me at their home in 2011. Jocelyn Evans placed me firmly on this journey. She gave me so many hours of her time—took me to my first academic conference, guided my undergraduate honors thesis, wrote letters of recommendation, and supported me as I laughed and cried. I am grateful for your friendship during those years and continue to be inspired by you. I am grateful to lost pets for their love. I am thankful to Mojo, our Boston Terrier, for his love and playfulness. I regret so much that we lost him while we were in Nepal. He was such a light in our lives, and we continue to love and miss him. I am thankful to Cat for being so sweet. Sam, who I've had for 14 years, has offered boundless joy, love, kisses, grunts, and snuggles. He has been my faithful companion throughout my undergraduate and graduate education. I love him so much. I am very grateful to still have the best old dog in the whole wide world.

The following people have been instrumental in this journey. Although they have passed and will not have the opportunity to read this, I feel it's important to include them as their love and support continue to inspire me. My maternal grandmother, Faith Boyd Draper, offered me kindness, support, and humor that helped me through my childhood. Tonya Manuel (Desiree's Mom), Mamie, and Papie offered their humor, Cajun cooking, and love to me. My father, Jerry Nelson Billingsley, supported my education every step of the way. I am so grateful for you. Mom, the mom, Cheryl Ann Combs Pritchard, opened her home and her heart to me. Your love undoubtedly saved me. My uncle, John Robert Billingsley, instilled an important sense of humility in me. I owe my passion for making the world a better place to my grandparents, Rupert and Dorothy Billingsley. When they witnessed the suffering of another human being, they didn't look away. They always engaged to ameliorate it. They showed me the way to academia through responding to my endless questions by helping me to find answers in the books on their bookshelf and engaging me further with conversations about what I was reading. Their deep love of me, especially, has carried me through very dark times even in their absence, both of which I continue to feel every day. I miss and love all of you so much.

Abstract

In this dissertation, I argue for an approach to transitional justice that analyzes the diverse and dynamic ways in which people experience armed conflict and its aftermath. I question what actually changes during a state's "transitional period" and illuminate how transitional justice is utilized, politicized, and manipulated by powerful actors. Throughout this dissertation, I examine the varied experiences of people who endured gross violations of human rights as children, according to international law, and who are now, within that legal framework, adults. I follow the lives of victims of Nepal's armed conflict as they transition out of what is recognized in international law as a temporary phase known as "childhood" and explore what they recognize as constant and temporal in their own lives as the Nepali state undergoes its own transition, also argued to be a temporary phase, transitional justice. I inquire how diverse identities and patterned inequality are reconstituted through processes of transitional justice and contend the façade of the inclusion serves as a distraction from claims for equitable access to power and resources. A key argument of this dissertation is that the performance of transitional justice in Nepal, including the performance of redressing human rights violations experienced by victims and addressing the needs of the most vulnerable victims (e.g. children), functions to conceal international complicity in as well as the state's commitment to maintaining structural inequality. Following ten years of armed conflict to ameliorate historically sedimented inequity, state-led transitional justice mechanisms have served to entrench the exclusion of economically, politically, and socially marginalized groups and ensure Nepalis' continued distrust in the national government. Thus, while addressing structural inequality may be beyond the reach of normative transitional justice mechanisms, the Nepali context demonstrates how processes of transitional justice cannot redress conflict-era gross violations of human rights without redressing inequitable systems of power.

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Chapter 1 Introduction

We are living in a double reality. One reality is I need money, but the other reality is I know this is not the best thing that I could be doing in the world. I know that working with the UN is not the best option to promote peace in the world, but there is not an alternative option. There are very excellent, good, and best people in the UN, but they are not in the capacity to change the whole system. The system is so big that when you enter into it, you are trapped. You are not allowed to write papers. When you are in the UN, your freedom is gone. You cannot write any articles in the newspaper. It would have to go to New York to get approval from the communications section. Once they approve it, you can do that. So, once you are in the UN, you're trapped and your personal freedom is gone. You are everywhere traced, you are coined as a particular brand, you're not allowed to interact with certain people. So, you are something different, more animal than human. Even from that level, again, I will say there is no option...There are some organizations that are trying hard to develop an alternative model, but they are not succeeding because they always have to please the powerful who have money. And the source of power, to my mind, is very disintegrated. The people who have arms, the people who have money, and the people who have these two big things are the power. So, those who have more arms, more money are powerful, and they have the power of coercion, not the power of peace. So, that's the world. We cannot change it.

I was sitting next to Udaya,¹ one of the primary people in charge of implementing peace education programs and curricula in Nepal. She was an educated, English speaking, and by international development standards, successful Nepali woman who had agreed to meet me at her office for an interview in July 2013. We were in a conference room sitting at the far end of a long table in a building used for the day-to-day activities of an international non-governmental organization.

I was surprised that Udaya was saying these things to me. I had started to expect that staff from organizations involved in transitional justice and peacebuilding would interact with me in ways that seemed like a performance for donors evaluating the implementation of their programs. Processes of transitional justice, typically implemented after an armed conflict, aim to redress violations of humanitarian and human rights law as well as facilitate justice, reconciliation, and democratic political transitions. These processes may include prosecutions, truth-telling, reparations, vetting, memorials, and the reform of government institutions. Peacebuilding processes, under which peace education would typically be categorized, aim to establish peace and prevent the resurgence of armed conflict. The United Nations (UN),

¹ The names of all interviewees in this dissertation are pseudonyms.

powerful international donors, and international non-governmental organizations typically offer financial and logistical support for peacebuilding and transitional justice. Udaya's statement was her response when I strayed from my interview schedule and asked her how people make sense of the contradictions in transitional justice and peacebuilding work. In the response quoted above, she described what came to be common themes during my research.

One such theme, in various iterations, is money. Although Udaya didn't believe that the work she was doing would make the world a better place or create world peace, one reason she was working on peace education was the salary it provided her. For her, this constituted two realities. In one reality, she must justify her work to herself and its funders, because she needs the money that her job (promoting peace) provides. On the other hand, she knows that there are better alternatives to the UN, donor, and international non-governmental organization models for transitional justice and peacebuilding. Yet, there is a larger system that even "excellent, good, and best people" cannot change because powerful actors prevent it.

Processes of transitional justice are intimately connected to a liberal peacebuilding model touting freedom as a primary goal. Freedom, in this context, is defined in terms of individual citizens' ability to democratically elect leaders to "represent" them. According to this definition, nation-states ideally transition from previously repressive modes of governance to liberal democracies, and perpetrators of human rights violations that occurred under previously repressive regimes are prosecuted. Hypothetically, in this model, if individual citizens are given the right to vote and perpetrators of human rights violations are prosecuted, then the violations will be redressed and peace will be sustained through democracy. Yet, Udaya said, "when you're in the UN, your freedom is gone" and described people working in the UN system as "trapped" even as they are promoting freedom and democracy. It is within this framework that less powerful nations are forced to comply in order to receive international aid. Calling such political transitions "democratic" is somewhat ironic given that national leaders are beholden to powerful nations rather than accountable to their own citizens.

Udaya's perspective evokes two additional themes I encountered during my research: power and the lack of alternatives. A common thread in my interviews with victims, Nepali politicians, diplomats, donors, UN staff, and people implementing state-led mechanisms of transitional justice is some iteration of a lack of alternatives and feeling as if they are trapped in a system in which more powerful actors control outcomes and systemically prevent meaningful

transitions that would improve the lives of Nepalis. However, these powerful actors seemed elusive. I kept seeking someone who would claim responsibility or power over processes of transitional justice in Nepal to no avail. In Udaya's comments, these powerful actors are anonymous, identified only as "the people who have arms" and "the people who have money." The power, she says, is of coercion and not of peace: "So that's the world. We cannot change it." Her job is implementing education programs in Nepal as a mechanism to promote peace after the cessation of Nepal's ten-year (1996-2006) internal armed conflict between the Communist Party of Nepal-Maoist and the Nepal government. The view she expressed to me would not be implemented into any peace education program nor would she would express it openly to staff at donor agencies, international non-governmental organizations, or the UN. It's a contradiction she tries to make sense of as she is doing this work "for peace." She does it for the money. She does it, she said, because there is no possible alternative.

I scheduled an interview with Udaya because I had been told during my preliminary research in 2013 by staff at various organizations and government offices that children were, along with women, the "most affected" by Nepal's armed conflict. As I began researching how children were affected and what mechanisms or programs were implemented on their behalf, however, additional themes became apparent. One, there was no agreed upon definition of "children" or "conflict affected children" by those implementing programs for those groups. And, further, most organizations implementing peacebuilding programs or transitional justice mechanisms didn't have a "transitioning" definition of children. By this I mean that the children they spoke of in interviews and conversations didn't seem to age. They were presented as static, frozen in time.

During my preliminary research, two other key themes were present in interviews, conversations, and my observations that align with existing literature on transitional justice in Nepal: inequality and the perceived problem of caste and ethnic identity within the nation-state. Ethnicity and caste are closely linked to vast economic, social, and political inequality. Scholars have criticized transitional justice policy and practice, particularly in Nepal, for its elitism and failure to redress hierarchies of power and inequality (Robins 2011, 2012, 2013; Sajjad 2013, 2016). Although transitional justice is often presented in official documents and webpages produced by UN organizations and international non-governmental organizations as neutral, existing scholarship has illuminated how it is inescapably political (Hazan 2017) and examined

the ways in which international influences over processes of transitional justice reinforce unequal systems of power (Ní Aoláin 2009; Wilson 2001). Within the liberal democratic peacebuilding approach, ethnic and caste identity is a problem in Nepal insofar as it must be accommodated to fit into a nationalist model of governance. There is a long history of power struggles related to diverse identities and inequality in Nepal deeply connected to the armed conflict, and, as I argue, processes of transitional justice. A key argument of this dissertation is that the performance of transitional justice in Nepal, including the performance of redressing human rights violations experienced by victims and addressing the needs of the most vulnerable victims (e.g. children), functions to conceal the state's commitment to maintaining structural inequality.

Transitional justice models base their legitimacy in international law, primarily human rights law and humanitarian law. It is according to these legal norms that violations must be redressed and perpetrators must be brought to justice. The origins of what is now referred to as transitional justice traces its origins to the post-World War II establishment of international tribunals created to prosecute war criminals. Although international human rights laws addressing diverse identities and inequality have been codified, those legal documents have yet to be prioritized in ways that change structures of power, thus ensuring ongoing discrimination and extreme poverty. Although the UN treaty system now officially recognizes all rights-from civil and political to economic, social, and cultural- as justiciable, in most countries undergoing processes of transitional justice, including Nepal, the mechanisms have typically focused on redressing the following violations, often categorized as “gross” violations of human rights: murder, torture, sexual violence, forced disappearance, arbitrary arrest and abduction, forced displacement, and the recruitment of child soldiers.

To come back to my interview with Udaya in 2013, my questioning of how she makes sense of the contradictions in her work was spurred by her detailed explanation of what would need to happen for Nepal to experience lasting peace. Among the themes she discussed were what she viewed as problematic homogenizing international development and its influence on the perpetuation of similarly problematic homogenizing nationalism, resulting in discrimination and “un-peace.” She explained,

I think all international development frameworks that are homogenizing the world are problematic. Why am I forced to speak English? Because of this homogenization and education, thousands and thousands of languages are dying every day. When language dies, knowledge dies, isn't it? So we are killing something for our comfort. Because I

know English, you should know English. So, we actually learn how to dominate small minorities...but the same policy [as in India] was brought to Nepal in 1956. An American came from India to Nepal to decide the education policy. He decided there should only be one language in Nepal, but there were more than 100 languages in Nepal. There was a clear policy: if you don't speak Nepali, you are not Nepali. So, it was systematic suppression and oppression of the people. Even today, the school leaving certificate from the children who attend in grade 1 out of 100 only two are getting to grade 10, only two. And mostly those are Nepali native speakers. Why? Because the others can't sustain in the school. Because if you can't speak clear Nepali, how can you pass? That is the kind of exclusion we have done. It is not only in Nepal. It's everywhere in the world. So, we made a standard frame. So everyone has to fit this. I cannot change this. This policy has also systematically oppressed the people in Nepal particularly. I can give you many examples. That is the cause of violence. That is the cause of the absence of peace. If I say, 'speak Nepali with me. Otherwise, I will slap you,' your peace will go down immediately, isn't it? So, that is the cause of un-peace in the life of Nepali people.

Attention to existing hierarchies and inequalities is particularly important in Nepal where the systemic political, social, and economic exclusion and stigmatization of certain groups have been identified as factors in the conflict (Joshi 2009; Lawoti 2010; Mani 2008; Pasipanodya 2008; Robins 2011, 2012; Sajjad 2013; Thapa and Sijapati 2003). Nepal's armed conflict was fueled by demands for the redress of social, political, and economic injustices. While statistically Nepal was showing an increase in economic growth and the expansion of development in the 1990s, the "income share of the top 10 percent of people increased from 21 percent in the mid-1980s to 35 percent by the mid-1990s, while the share of the bottom 40 percent shrank from 24 percent to 15 percent by the mid-1990s" (Lawoti 2010; quote in Sharma 2006:1243). Thus, when the armed conflict began, many people were experiencing extreme poverty and vast economic inequality, including inequitable access to land ownership, forests, and water (Lawoti 2010). Large segments of the population were excluded from the benefits of development, and poverty levels were substantially higher in rural areas than urban areas. Significant inequalities existed based on caste and ethnic group membership as well. "High" caste male elites continue to dominate powerful positions, including the head of state, the judiciary, the legislature, academia, and non-governmental organizations in addition to having greater access to resources, including, for example, education and land (Ibid). The Communist Party of Nepal-Maoist directly confronted these issues and demanded land redistribution, free and equitable access to education, healthcare, roads, drinking water, and electricity (40 demands as cited in Thapa and Sijapati 2004: 211-218).

Transitional justice policies are closely related to development policies and frameworks based on modernization theory. Within all of these models, social and political progress are marked by comparing “less developed,” “Third World” countries to “developed” countries in “the West,” and measuring their “backwardness” or “progress” by their commitment to democratic norms and values, among other key indicators. This dissertation builds on the work of previous scholars that have critiqued transitional justice as an “industry” that obscures the complicity of powerful states and neoliberal policies in human rights violations, illuminated how global power inequities are reproduced through processes of transitional justice, and called for transitional justice to address inequality and structural violence through “distributive justice” and “transformative justice” (e.g. Aguilar and Gómez 2011; Bergsmo, et al. 2010; Gready 2010; Gready and Robins 2014; Mani 2008; Ní Aoláin 2009; Robins 2011, 2012, 2013; Sundar 2004).

Ironically, as transitional justice policy simultaneously creates and homogenizes victims of human rights and humanitarian law violations, it is based on an ideology of hierarchy and a teleology where the nation-state modernizes, becomes developed, and progresses towards a liberal democracy. In other words, the state is theorized as transitioning, but the people within the state are treated as static and homogenous. More specifically, victims are often homogenized in discourses on transitional justice as if their experience of a gross violation of human rights alone determines their needs during and after an armed conflict. Although greater attention has been drawn to the impact of armed conflict on children since the Convention on the Rights of Child came into force in 1990 (see also Graça Machel’s 1996 report highlighting the topic), how children’s needs change over time and how the combined experiences of being a victim and, for example, poor, female, “low” caste, and located in a rural village, impacts their ability to access processes of transitional justice, are not considered in scholarship or policy. Further, attention to “the local,” often opposed to “the global,” encourages nationalist policies and practices that fail to account for heterogeneity within national contexts. In countries undergoing processes of transitional justice after an internal armed conflict, a nationalist “local” is exclusionary to the most marginalized victims within a nation-state. Although human rights law and humanitarian law recognize social diversity, transitional justice policies homogenize victims, arguably as part of the nation-building project. Because processes of transitional justice are typically focused on the transition to a newly/differently governed nation-state, it is unsurprising that such processes fail to focus on difference, discrimination, and inequality within a state where nationalism is

likely prioritized to facilitate the political transition. Nationalism, as Calhoun argues, “has played a central role in the development of ‘essentialist’ thinking,” or reducing “diversity in a population to some single criterion held to constitute its defining ‘essence’ and most crucial character” (1995:18). Within such conceptualizations, people are thought to belong to one nation, one “race,” and speak one language without contemplation of the ways in which people understand themselves as members of different organized collectivities (i.e. families, communities, international organizations) and identities simultaneously, and further, it’s taken for granted that people’s identities can change over time (Ibid: 18-19).

Overarching Arguments and Summaries of Chapters

In this dissertation, I argue for an approach to transitional justice that analyzes the diverse and dynamic ways in which people experience armed conflict and its aftermath. I question what actually changes during a state’s “transitional period” and illuminate how transitional justice is utilized, politicized, and manipulated by powerful actors. Throughout this dissertation, I examine the varied experiences of people who endured gross violations of human rights as children, according to international law, and who are now, within that legal framework, adults. I follow the lives of victims of Nepal’s armed conflict as they transition out of what is recognized in international law as a temporary phase known as “childhood” and explore what they recognize as constant and temporal in their own lives as the Nepali state undergoes its own transition, also argued to be a temporary phase, transitional justice. By focusing on the chronological transition of victims’ biological age, I highlight people’s dynamic lived experiences during Nepal’s political transition. I inquire how diverse identities and patterned inequality are reconstituted and performed through processes of transitional justice and whose interests are served. I contend the performance of inclusion through state-led transitional justice mechanisms functions to conceal international complicity in as well as the state’s commitment to maintaining structural inequality and serves as a distraction from claims for equitable access to power and resources.

In the next chapter, I outline my research methodology. I conducted 14 months of ethnographic research in Nepal May-July 2013 and January-December 2016 primarily in two districts: Kathmandu and Bardiya. In addition to being the headquarters for Nepal’s national government, UN agencies, non-governmental organizations, diplomats, and donors, the primary institutions responsible for implementing state-led processes of transitional justice are all located in Kathmandu, Nepal’s capital. Bardiya was one of the most affected districts during Nepal’s

armed conflict (in terms of gross violations of human rights), is primarily rural, and the majority of people living there are politically and economically alienated from the nation's capital city. In both districts, I had conversations and conducted semi-structured as well as informal interviews with victims of Nepal's armed conflict, including prominent members of victims' organizations, in addition to members of Nepal's truth-seeking commissions, Nepali government officials, diplomats, donors, and staff from the UN, international non-governmental organizations, and non-governmental organizations. Additionally, I conducted semi-structured interviews with 14 Nepalis who experienced a gross violation of human rights as a child, as defined in international law (younger than 18 years of age), in both Kathmandu and Bardiya (28 total) to analyze how victims understood and evaluated transitional justice mechanisms. My fieldwork also entailed observing eleven key events, including victims' groups meetings, memorials, conferences, demonstrations regarding transitional justice, and meetings hosted at the Transitional Justice Resource Centre.

Examining Nepal's social structure and political history in Chapter Three, I discuss the connections of Nepal's armed conflict to social, political, and economic exclusion. I pay particular attention to communist movements in South Asia, Nepal's peace agreement, and transitional justice processes following the armed conflict. I argue Nepal's history of patterned inequitable access to power and resources, along with the exacerbation of inequality due to international development aid and neoliberal policies, must be examined to analyze how processes of transitional justice and ongoing social, economic, and political exclusion are historically sedimented and continue to be contested.

In Chapter Four, I analyze the perceptions and experiences of adults who were children when their fathers were killed or disappeared during the armed conflict in Nepal. I examine theories of children and armed conflict and challenge homogenizing, fixed conceptualizations of "children" and "the local" within transitional justice scholarship and practice. I argue age alone does not determine children's vulnerability during armed conflict and call for the redress of entrenched systems of domination and inequality.

Chapter Five draws attention to the meanings victims and their families in Bardiya, a rural and largely poor region of Nepal where 52% of the population is from the indigenous Tharu community, assigned to education and highlight their experiences of inequitable access to scholarships targeting "conflict affected children" as part of Nepal's Interim Relief Program. I

argue that discourses of knowing/not knowing are instrumental in the concealment of power and the perpetuation of marginalization and inequality in Nepal. Through examining the scholarship provision for “conflict affected children,” I contend the barriers conflict victims in Bardiya experience trying to access scholarships demonstrate not only that structural inequality still exists during the “transitional” period but that the state is committed to maintaining it.

I focus on Nepal’s Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons in Chapter Six. Through observation of and interviews with facilitators and victims about the “complaint-taking” processes of both commissions, I analyze the performance of inclusion and show how marginalized victims were systemically excluded from these truth-seeking processes. Despite the lack of inclusive practices implemented at the national level and minimal international support, Nepal’s truth-seeking commissions received more than 58,000 complaints. I examine the inclusion of “children” in the commissions’ policies, question facilitators’ understandings of “children” in the Nepali context, and include the diverse experiences and perceptions of the commissions by two Nepali males who were tortured by soldiers in the Nepal Army when they were younger than 18 years of age. Rather than redress the human rights violations they experienced during armed conflict, I maintain that by excluding victims generally, and marginalized groups specifically, processes of transitional justice in Nepal have entrenched inequality and distrust in the government. Within this context, justice, as defined by victims, remains elusive both now and in the foreseeable future.

Chapter 2 **Research Methods**

Research Design and The “Field” in Time and Space

I conducted 14 months of ethnographic fieldwork in Nepal from May to July 2013 and from January to December 2016. In 2013, I conducted preliminary research in the Kathmandu Valley and five districts of the Mid-Western Region, including Banke, Bardiya, Dang, Surkhet, and Rolpa. Although I was already working to learn the Nepali language, a male research assistant fluent in Nepali and English traveled with me to all districts in the Mid-Western Region in 2013 and served as my translator during all interviews. Kathmandu, Nepal’s capital, is the headquarters of the primary institutions involved in the administration of transitional justice mechanisms at the national level. The Mid-Western Region of Nepal is considered to be the most affected by Nepal’s armed conflict in terms of the greatest number of casualties and enforced disappearances. During my preliminary research in 2013, I conducted semi-structured and informal interviews with people involved in processes of transitional justice in Nepal, including conflict victims, national and local politicians, local peace committee members, and staff from UN agencies, non-governmental organizations, and governmental organizations. These interviews revealed that perceptions of effective redress regarding human rights violations experienced by Nepalis varied among and between the aforementioned groups; additionally, these interviews illuminated a common perception: that women and children were “the most affected” by Nepal’s conflict. I observed critical events regarding transitional justice in Nepal, including demonstrations by victims’ groups and “fortnightly talks” presented at the Transitional Justice Resource Centre in Kathmandu. In addition, I conducted archival research at the Transitional Justice Resource Centre and the Kathmandu School of Law examining local literature and other resources, including news articles, victims’ groups’ publications, and a conflict mapping database. My initial study allowed me to narrow my research sites to two districts, Kathmandu and Bardiya. Bardiya was one of the most affected districts during the armed conflict. The most enforced disappearances during the armed conflict occurred in Bardiya, and members of the indigenous Tharu community were disproportionately affected.

When I returned to Nepal in January 2016, I initiated my research in Kathmandu. Everyday life was noticeably different compared to 2013 due to the fuel crisis that had been ongoing since Nepal’s new constitution was promulgated in September 2015. Compared to 2013,

taxi rates had tripled, and public transportation was slow, scarce, and uncomfortable as space on buses was extremely limited. Traveling from my residence in northwest Kathmandu to central Kathmandu by bus took an hour and a half and sometimes two hours one way. I often watched from the bus window as people loudly argued while waiting in line for cooking gas, which, along with petrol was being rationed by the Government of Nepal. The family I stayed with in Kathmandu was noticeably tense about the scarcity of cooking gas, petrol, food, and medicine. Additionally, since I left Nepal in 2013, national elections were held with the Nepali Congress Party (NC), a center-left party, capturing the highest number of votes and their leader, Sushil Koirala, becoming the prime minister in February 2014. In October 2015, the Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML), a moderate communist party, captured power and Khadga Prasad Oli was the prime minister when I returned in January 2016. From the time of the first post-war elections in 2008 until 2016, Nepalis witnessed eight changes of government. The Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) had both been established, the country had endured a 7.8 earthquake, and a new constitution had been promulgated.

Regarding processes of transitional justice, by January 2016, the TRC along with the CIEDP and the National Human Rights Commission formally requested that the Government of Nepal amend the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 (TRC Act), in accordance with the 2014 Supreme Court verdict that declared amnesty provisions unconstitutional. Yet, the TRC Act remains unchanged since its promulgation in May 2014. Due to the government's refusal to amend the TRC Act, in February 2016, the UN formally declared their lack of support for Nepal's truth commissions. Prominent diplomats, donors, international non-governmental organizations, and non-governmental organizations have also expressed their lack of support based on the amnesty provision in the TRC Act. In March 2017, the TRC and CIEDP announced they would begin "accepting complaints" from victims in mid-April. Although initially limited to 60 days, the commissions extended the acceptance of complaints to 90 days total.

After the commissions began accepting complaints, I decided to conduct research in both districts throughout my 12 months of fieldwork allowing me to maintain contacts and attend events in Kathmandu and Bardiya. By December 2016, I had traveled to Bardiya from Kathmandu and back four times. Traveling between field sites allowed me to observe

complaint-taking processes, victims' organizations' meetings, demonstrations, and conferences in both districts. In addition, by May 2016, I had developed relationships with victims and transitional justice facilitators in both districts. In Kathmandu, I observed demonstrations regarding transitional justice in front of national government offices, utilized libraries for archival research, and maintained contact with government officials and non-governmental organizations involved in transitional justice advocacy or policy implementation and with members of national conflict victims' organizations based in the capital. In Bardiya, I conducted research in multiple rural villages and in Gulariya, the district headquarters. For the safety of my informants, I have not included the names of the villages where I conducted research. Bardiya District is located in the Terai (the lowland region of southern Nepal), borders India, and is primarily rural and agricultural.

In May 2013, I initiated formal language training in Nepal. Over the summer of 2015, I attended the Summer Intensive Nepali Language Program at Cornell University and continued my language training in Nepal during my fieldwork in 2016. Interviewees were given the option of speaking the language of their choice. Thus, I conducted interviews in English, Nepali, and Tharu or some combination thereof. My research assistants served as translators for interviews conducted primarily in Tharu and/or Nepali. My primary research assistant was Pooja Chaudhary. Ms. Chaudhary is fluent in Tharu, Nepali, and English and translated during interviews in Kathmandu and Bardiya. Because she was pursuing her law degree, I worked with three additional research assistants when Pooja was unavailable. In Bardiya, I worked with a male research assistant, Ajit Dahit, fluent in Tharu, Nepali, and English who was pursuing a degree in Microbiology. My male (Ajit Dahit) and female (Pooja Chaudhary) research assistants in Bardiya were both members of the Tharu community. In Kathmandu, I worked with two female research assistants, Bandana Aswathi and Asmita Poudel, who were both fluent in English and Nepali. Asmita Poudel was pursuing a degree in Conflict, Peace and Development Studies and working at a non-governmental organization as a Gender and Transitional Justice Officer. Bandana Aswathi was a graduate student pursuing a degree in Anthropology. All the aforementioned research assistants resided primarily in Kathmandu and served as translators during interviews.

In addition to providing translation, all of my research assistants offered their own insights into my research. After interviews, I had conversations with research assistants about

their reflections, asked questions for clarity, and sought their perceptions of my insights and ongoing analyses. They also provided valuable practical advice in terms of appropriate phrasing of interview questions and etiquette before, during, and after interviews. When interviewees invited us into their homes, I frequently looked to my research assistants for guidance on appropriate behavior and phrasing of words. Pooja Chaudhary, in particular, guided my words and actions in ways that helped me to develop respectful relationships with informants in Kathmandu and Bardiya. At times during my research, I lived with and shared food with Pooja's and Ajit's families. I referred to Pooja as my younger sister and Ajit as my younger brother. Although I did not live with their families or refer to them with familial terms, Asmita and Bandana were incredibly friendly to me and supportive of my research. I am grateful for the relationships I developed with all of my research assistants. Their guidance and support were fundamental to my being able to conduct my dissertation research.

The following questions and objectives guided my research. First, how did children experience the armed conflict relative to their position in Nepali society? To examine this question, I conducted analyses of conflict reports issued by the United Nations, international non-governmental organizations, and non-governmental organizations. The examination of factors shaping their experiences was based on my analysis of historical patterns of marginalization and discrimination in Nepal, my experience in the field, and victims' perceptions of their own position in Nepali society as revealed through ethnographic interviews. Secondly, I questioned how Nepalis who experienced gross violations of human rights as children viewed the effectiveness of transitional justice mechanisms. Relatedly, I wanted to know how differences in social distinctions, such as gender, age, caste, ethnic group, political and religious affiliation, access to resources, and region of residence shaped their ability to access transitional justice mechanisms. Finally, I sought out the perspectives of Nepalis who experienced gross violations of human rights as children on the Nepali government, justice, reconciliation, the ongoing peace process, and other political dynamics in Nepal.

These initial research questions led to additional inquiries during the course of my research and analysis. I began to critically investigate how structural inequality was reconstituted through transitional justice, and relatedly, who had the authority to implement transitional justice policies and why. I also wanted to understand what I saw as the performance of inclusion through transitional justice and what political work was being accomplished through the façade of

inclusion. I utilized ethnographic methods, including semi-structured and informal interviews, conversations, participant observation, observation, and archival research.

My fieldwork entailed observing eleven key events, including victims' groups meetings, memorials, conferences, demonstrations regarding transitional justice, and meetings hosted at the Transitional Justice Resource Centre. I conducted semi-structured and informal interviews and had conversations with victims of Nepal's armed conflict, including prominent members of victims' organizations, as well as members of Nepal's truth-seeking commissions, Nepali government officials, diplomats, donors, and staff from the UN, international non-governmental organizations, and non-governmental organizations.

Additionally, I conducted semi-structured interviews with 14 Nepalis who experienced a gross violation of human rights as a child (as defined in international law-younger than 18 years of age), who had since transitioned into adulthood (within international law-18 years of age or older) in both Kathmandu and Bardiya (28 total) to analyze how victims understood and evaluated transitional justice mechanisms. Further, people who were affected by conflict as children from different castes, ethnic groups, genders, religious and political affiliations and with varying access to resources were interviewed in both districts allowing a comparison of their experiences of conflict and the "transitional" period. Victims' ongoing social and life-cycle transitions are frequently disregarded, and this dissertation contributes to transitional justice scholarship and practice through emphasizing the significance of victims' dynamic and varied lived experiences. Interviewees were identified through conversations with prominent members of victims' organizations as well as village leaders and snowball sampling. During the course of some interviews, interviewees revealed that they had not experienced what would be considered a gross violation of human rights within international law. Although those interviews are not counted in the 28 total listed above, they were all transcribed and analyzed. My analysis of interviews with people who were affected by armed conflict as children (younger than 18 years of age) but did not, according to international law, experience a gross violation of human rights also contributed to the arguments in this dissertation. Interviews focused on perceptions of (1) justice and reconciliation regarding the human rights violation(s) they experienced during the armed conflict and the ongoing peace process in Nepal, (2) "effective" redress of the violation(s), (3) existing transitional justice mechanisms, specifically truth-seeking commissions and the Interim Relief Program, and (4) the Nepali government. All interviewees were asked to self-

identify their demographic data and interviews were coded by age, gender, caste, ethnic group, marital status, access to resources, region of residence, education, occupation, religious affiliation, and political affiliation. Although most of these codes were discussed over the course of the interview, I created a personal data sheet to ensure all interviews were coded as consistently as possible. Following every interview, interviewees were given a form to complete asking their (1) age, (2) gender, (3) marital status, (4) number of children, (5) current/natal region of residence, (6) religious affiliation, (7) political party affiliation, (8) group membership, (9) caste/ethnic group, and (10) the highest level of education completed by themselves, their children, and their parents. Regarding access to resources, the personal data sheet listed questions about their and their families' (1) occupation, (2) ownership of house, land, and livestock², (3) income, and (4) economic struggles. My research assistant offered to assist interviewees as they were completing their personal data sheet.

In international human rights and humanitarian law, “children” are codified uniformly according to biological age. However, conceptualizations of children in Nepal are diverse and the perceived transition into adulthood is more complex than reaching a certain biological age. Scholars have illuminated how, in Nepal, transitions into adulthood are marked by getting a job, becoming physically developed, and understanding appropriate behavior (Kohrt and Maharian 2009). When I asked their age, many of my interviewees paused. After some thought, all of my interviewees were able to respond to questions regarding their current age and date of birth. Yet, several interviewees asked if I wanted their real age or their age according to their citizenship. In Nepal, births are not typically registered with the government. At the age of 16, Nepalis are eligible to go to their local government office and register as citizens. At that time, their date of birth is registered as part of the process. For some of my interviewees, they registered their date of birth as earlier, making their officially recognized age older, typically with the hopes of securing employment in sectors with an age bar. Because transitional justice aims to redress violations of international human rights and humanitarian law, I focus on Nepalis who were children according to international law (younger than the age of 18) when they experienced a gross violation of human rights. I asked interviewees for their accurate date of birth to determine

² See, for example, pages 29-31 in this dissertation on how inequitable access to land was significant in Nepal's armed conflict. Owning livestock can be a marker of a family's livelihood and access to food, particularly in Bardiya, which is primarily an agricultural district.

if they were younger than 18 years of age during the armed conflict. All interviewees self-identified as either male or female, and, in both Kathmandu and Bardiya, I interviewed seven (14 total) males and seven (14 total) females.

In Nepali, “*jat*” is often used without distinction to denote what in English is categorized separately as “caste” and “ethnic group.” However, since the 1990s, the term “*janajati*” has become more popular in Nepali to describe what in English might be termed “ethnic group” as well as the phrase “*adivasi janajati*” translated to English as “indigenous nationality” or “indigenous ethnic group” (Gellner 2007; Shneiderman 2013). Gellner (2007) traces this distinction and the Nepali neologism to Indian origins, coming into Nepali from Bengali, via Darjeeling, and argues the distinction of “*janajati*” is similar to the distinction between caste and tribe in India. The timing of this distinction is correlated with the end of a period in Nepal known as the Panchayat era, during which Nepalis were encouraged to portray themselves as homogenous (though not equal). The Panchayat era ended in 1990 with an uprising known as “The People’s Movement” (*jana andolan*) leading to a new constitution that declared Nepal was a “multiethnic,” “multilingual,” “Hindu,” democracy. Subsequently, membership in a *janajati* group was viewed by some as a political advantage in a country where high caste Hindu men dominated every aspect of politics (Ibid). Issues surrounding the ongoing marginalization of people from “low” caste and *janajati* groups have remained contentious after the signing of the Comprehensive Peace Agreement marking the cessation of Nepal’s armed conflict in 2006. For example, contention over the 2015 constitution, over which the fuel crisis occurred, was due to the continued political exclusion of historically marginalized groups as exemplified through the determination of Nepal’s newly demarcated federal provinces.

In Nepal, everyone is aware of their “*jat*,” which has important implications in everyday life often determining their access to resources and representation in government. Surnames are typically a marker by which “*jat*” is revealed. Asking someone which caste group they belong to can be offensive, particularly for marginalized groups. Oftentimes, people’s last names do mark their membership in a particular group. Yet, it was important for my research to understand my interviewees’ perceptions of their membership in a particular group and how it affected their everyday lives, experiences of armed conflict, and access to mechanisms of transitional justice. Interviewees often brought up their “*jat*” during the interview. They were asked to clarify not only others’ perceptions of their “*jat*” but also their understanding of the concept while

completing the personal data sheet. I administered the personal data sheet at the end of each interview first explaining why it was important for my research to gather data on sensitive personal questions and assuring them their name would not be associated with the information they provided. I interviewed Nepalis affected by armed conflict as children from multiple “*jats*” in Kathmandu and Bardiya, including people who identified as Brahmin, Chettri, Gurung, Magar, Madheshi, Tamang, and Tharu. In this dissertation, I primarily focus on the experiences and perceptions of members of the Tharu community.

Interviewees’ and their family members’ occupations, annual income, as well as land, livestock, and house ownership determined “access to resources” as a code. The interviewees’ and their family members’ level of education, and if they attended private or public school were also considered in “access to resources,” but were coded separately. On the personal data sheet, I asked interviewees if they struggled to buy anything on a regular basis. As with “*jat*,” interviewees’ access to resources was discussed over the course of the interview in addition to the questions asked in the personal data sheet. While questions regarding religious affiliation were answered, albeit typically briefly and without hesitation, some interviewees preferred not to initially disclose their political affiliations. There was a distinction made by interviewees between membership in a political party and their perceptions of one political party being more representative of the issues they valued. Over the course of the interview, or in subsequent conversations or observations, their political views were revealed, and often their political affiliation or membership. For many interviewees, this meant their continued refusal to affiliate with or support any political party, and for others, their tentative support offered to one party they considered only slightly better than any other political party. Yet, some interviewees unabashedly proclaimed their support for and affiliation with a particular political party.

Interviewees were chosen based on purposive and snowball sampling techniques. In purposive sampling, informants are chosen based on their experiences regarding the research topic (Bernard 2011). In snowball sampling, informants are chosen based on recommended lists from previous informants. Key informants that I met in 2013 aided in snowball sampling. Purposive sampling and subsequent snowball sampling were extremely productive sampling techniques to engage with members of the international community, domestic facilitators of transitional justice, and victims. I gained initial entry into the Kathmandu-based transitional justice arena, meaning meeting people involved in victims’ organizations, staff from UN

organizations, international non-governmental organizations, non-governmental organizations, academics, and politicians during my preliminary fieldwork in 2013. When I visited the Transitional Justice Resource Centre in 2013, I met the director, who was an anthropologist. He personally invited me to programs hosted at the Centre and suggested people for me to interview. When I struggled to establish a connection with someone, he called them on my behalf or went with me to the initial meeting (suggesting it would later be easier to schedule an interview after I had established contact in person). I also developed some of these relationships via email and video conferencing from the United States until returning to Nepal in 2016. The connections I developed by meeting, having conversations with, and interviewing people involved in transitional justice during my preliminary fieldwork aided my access to interviewees in 2016.

During my preliminary research outside of the Kathmandu Valley, I established some connections with members of victims' organizations and non-governmental organizations that were developed further in 2016. However, relationships with most of my interviewees and informants in Bardiya were initiated during my fieldwork in 2016. To gain access in Bardiya, I sometimes relied on my informants in Kathmandu to provide contact information and establish contact on my behalf. In some government offices, I just showed up and, in others, I was able to arrange a meeting before arriving.

Primary documents, such as press releases issued by victims' groups and reports by the UN, international non-governmental organizations, and non-governmental organizations, were analyzed, and fieldnotes were taken throughout the research. Fieldnotes included details about the place, space, and circumstances of my observations, interviews, and conversations (Emerson, et. al 2011). I recorded interviewees' and my own verbal and non-verbal responses, interviewees' perceptions, and notes about our interactions and their interactions with others. I also took jot notes during interviews, observation, and, at times, during conversations and participant observation, and I utilized the jot notes to later to write full fieldnotes (Ibid). I primarily recorded notes, and my research assistants sometimes aided in note taking.

I initiated data reduction and analysis in the field and throughout my data collection and writing (Dewalt and Dewalt 2002; Emerson, et al. 2011 Dewalt and Dewalt 2002; Glaser and Strauss 1967; Miles and Huberman 1994; Strauss and Corbin 1990, 1998). I entered fieldnotes, primary documents, and transcribed interviews into Nvivo (qualitative data analysis software). I then analyzed the data using inductive and deductive coding to identify patterns and themes.

During analysis, I wrote theoretical memos to document applicable theoretical concepts related to the data being analyzed, and I took integrative memos to clarify and link analytic themes and categories (Emerson, et al. 2011).

Informed Consent and Safety Concerns

The safety of my informants was a primary concern during my fieldwork. All interviewees were informed in writing and verbally the purpose of the interview, their participation was entirely voluntary, and they could stop participating at any time. Interviewees were encouraged to share their experiences and perceptions only as they were comfortable. All interviewees were made aware that I was a Ph.D. student from the United States of America conducting my dissertation research in Nepal.

Interviews were conducted with people affected by conflict as children with the agreement that I would not include identifying information about them in any of my publications. Further, I explained that I was not associated with the UN or any organization, that I was writing a book and would like to include their stories and perceptions, and that I otherwise was unsure what would happen as a result of my research. I said that I hoped to return but it was possible this would be our only meeting. Interviewees were informed that their participation would not directly result in them receiving any humanitarian aid or other compensation. I also explained that I took an applied approach to my work and hoped that my research would positively affect their lives. Yet, the only result I could reasonably assure them of was the publication of my research. Interviews were conducted in private as per the preferences of the interviewees. All interviewees were asked to choose if they preferred to be alone during the interview or in the presence of their family members and/or friends. Most interviewees preferred to be alone during the interview while others preferred the presence of one or more of their family members (usually their mother) or a friend. During data collection and analysis, efforts were made to ensure the confidentiality of respondents. After their interviews, all interviewees were assigned a number and their names removed from their interview transcripts. All data collected through fieldnotes with potentially identifying information was carried with me until it was destroyed in the field during ongoing data reduction and analysis.

Chapter 3³

Historically Sedimented Inequality and Exclusion

This kind of structure is not created in a day. We're talking about the existing structure and the effects of conflict and intervention while addressing that. If we look at the intervention by the government in the form of the Interim Relief Program, there is no visible discrimination at a face value. However, there is discrimination. For example, torture victims and victims of rape and sexual violence are excluded...Based on gender, in the scholarship [provision], there is no discrimination at face value by the government. It is not said that okay only the girl child will get the scholarship or only the boy child will get the scholarship. But the structure is that there is a kind of defacto discrimination that takes place. In many places during the [distribution of] the Interim Relief Program, many people didn't have access to information about what kind of documents they needed. In many places, their marriage was not registered. So, the state officials were asking for documents that they didn't have. Customarily and still many people who get married have not registered. There is no practice of registering birth also. There is a kind of discrimination compared to the people in the urban areas who have that kind of legal registration. The people in the villages are discriminated against by the existing structure. There is a kind of discrimination in the Interim Relief Program. So, those kinds of practices are there.

I was having tea with Kavi who was working for a Kathmandu-based international non-governmental organization as he explained to me that the discriminatory practices associated with processes of transitional justice in Nepal were connected to historically sedimented structures. Significantly, he highlights how, within transitional justice policy, the discriminatory aspects may not be apparent to those unfamiliar with Nepal's context. In this chapter, I highlight the contestation and reiteration of historically sedimented power relations in Nepal. I argue Nepal's history of patterned inequitable access to power and resources, along with the exacerbation of inequality due to international development aid and neoliberal policies, must be examined to analyze how processes of transitional justice and ongoing social, economic, and political exclusion are historically sedimented and continue to be contested.

Since the inception of the Nepali state, males from certain caste groups have been politically and economically dominant (Whelpton 2005). As Guneratne (2002:72) argues, "from the perspective of interethnic relations in Nepal, what is salient is that the landowning nobility, the bureaucracy, and the higher ranks of the military were all drawn from the dominant Brahmin, Chhetri, and Thakuri castes of the hills." In 1768, Prithvi Narayan Shah unified Nepal after

³ Excerpts of this chapter are taken directly from Billingsley (2018).

conquering various independent kingdoms and principalities, moved the capital to Kathmandu, and established the Shah dynasty. Through the Shah dynasty, succession of power was passed down based on the divine right of kings.

Following an organized massacre of political leaders and takeover of power, in 1846, Jang Bahadur Rana initiated the Rana regime, which demoted the Shah King to a figure head, established a system of hereditary prime ministers, and perpetuated the marginalization of “low” caste groups. For example, in 1854, Rana enacted the *Muluki Ain*. This code of law divided people into a caste system based on five basic categories: “wearers of the sacred thread,” “non-enslavable alcohol drinkers,” “enslavable alcohol drinkers,” “impure but touchable castes,” and “impure but untouchable castes” (Höfer 1979). The categories were hierarchically ranked, and the law included stipulations on socially acceptable practices, such as food taboos and the prohibition of marriage between groups and adopting another group’s traditional professions (Ibid). While these legal norms map onto sociocultural experience in complex ways and the categories are fluid and contested through social practice, the Nepali state explicitly sanctioned social hierarchies and codified discrimination. Further, the Nepali language and Hindu religious practices were not only encouraged, but also legally endorsed by the state (Whelpton 1997). These practices legitimized elite dominance and power and have continued despite political and social changes in Nepal. Through each political change, ideas about the inherent inequality between and among groups of people in Nepal have been encouraged and utilized to ensure the power of some and the exclusion of others.

In 1951, with the support of the Indian government, Nepalis educated abroad, many of whom were involved in the Indian independence movement, started a successful political movement against the ruling Ranas. Talks were initiated to establish a constitution with a representative form of government, and the Shah king, King Tribhuvan, called for the establishment of a multi-party democracy and the election of a Constituent Assembly. Despite numerous changes in political power, Nepalis outside of dominant groups have continued to experience widespread political exclusion and economic inequality. Political power and wealth are concentrated in Kathmandu, and people living outside Nepal’s capital city have been consistently ignored by those in power and excluded from access to resources. Further, since its inception, kings residing in Kathmandu have demanded shares of resources and enforced systems of feudalism throughout the country.

In Nepal, diverse identities among those who reside within state boundaries has been emphasized, reiterated, and contested through law, the rhetoric of political leaders, and in national ceremonies. As Calhoun (1997) has argued, nationalism demands conformity. During the Panchayat era in Nepal, from 1960-1990, Nepal was officially declared a Hindu Kingdom, caste hierarchy was reinforced by the state, and attempts were made to induce conformity within the nation through promoting homogeneous nationalism that ignored any form of cultural difference. State leaders promoted the slogan “*ek bhasa, ek dharma, ek bhes, ek desh*” (one language, one religion, one form of dress, one country). National holidays often included performances that symbolized the union of the state with Hinduism (e.g. political leaders riding in chariots with Hindu priests), and, before the fall of the monarchy in 2006, the king was revered as an incarnation of the Hindu god Vishnu.

Simultaneously, while political leaders were reiterating the nation’s homogeneity, they were entrenching a hierarchy where “high” caste Hindu males from the hill region were placed in the most powerful positions in Kathmandu and throughout Nepal. For people or communities who did not conform or were marked as different, their Nepaliness, along with their value and notion of belonging to the state, were questioned. Thus, even as the Nepali state promoted homogeneity within a heterogeneous nation, it enforced a hierarchy that privileged “high” caste Hindu males and marginalized the majority of people living within its boundaries. Despite the historical and ongoing systemic state suppression of people in Nepal who spoke languages other than Nepali, practiced religions other than Hinduism, and claimed an identity other than that prescribed through Nepali nationalism, the most recent national census (2011) lists 125 caste and ethnic groups, 123 languages, and six religions.

Political spaces opened in the 1990s as a result of *Jana Andolen I* (The People’s Movement), during which historically marginalized groups mobilized en masse, and, as a result, a multi-party democracy with a constitutional monarch was established. This allowed space for multiple groups, particularly ethnic and “low” caste groups, to organize for rights and representation, and Nepal was declared a multiethnic and multilingual state. While the 1990s are recognized as the time when marginalized groups organized against the dominant order, indigenous groups overtly and subtly contested their exclusion through rebellions and cultural preservation organizations during the Rana and Panchayat periods (Caplan 1970; Hangen and Lawoti 2013; Sagant 1996).

In addition, Dalit (“low” caste within the Hindu caste hierarchy),⁴ Madheshi,⁵ and Muslim organizations seized their first opportunity to publically organize in the 1950s when Nepal was first established as a democracy, but were repressed by the national government (Hangen 2009; Hangen and Lawoti 2013; Thapa 2012). However, with more political space for dissention, ethnic parties, non-governmental organizations, cultural associations, and identity movements expanded greatly in the 1990s (Gellner, et al. 1997; Hangen 2007; Hangen and Lawoti 2013; Jha 1993; Lawoti 2005; Pfaff-Czarnecka 1999). As the 1990 constitution was being drafted, the marginalization of certain ethnic, regional, linguistic, and religious identities became contested political issues. Yet, “high” caste Hindu elites dominated the constitution-drafting process, ignored the demands of marginalized groups, and promoted traditional Hindu nationalism (Lawoti 2007; Lawoti and Hangen 2013). Thus, marginalized groups in Nepal, despite organizing for greater recognition and rights by the state, remained excluded and dissatisfied with the 1990 Constitution (Bhattachan 2013). It was within this context that the Maoists built their movement, and Nepal’s internal armed conflict erupted in 1996.

The Communist Movement in South Asia

The beginning of the communist movement in Nepal can be traced to 1949 when the Communist Party of Nepal (CPN) was established in Calcutta with the aid of Indian communists (Lawoti 2010:5). The party grew in the 1950s, but secured only four out of 109 seats in the first election to Parliament in 1959 (Ibid). During the Panchayat era (1960-1990) when political parties were banned in Nepal, the communist movement spread discretely even as communist parties were factionalized internally and suppressed by state power and politics. Influenced by

⁴ The term “Dalit” is utilized as a self-reference and often refers to a political identity in South Asia for people who are outside of the traditional four-caste system. Stigmatized as impure and polluting and, thus, physically, economically, politically, and socially excluded, Dalits are also disparagingly referred to as “untouchables.”

⁵ Although commonly utilized as a term to describe a group of people living on Nepal’s southern border with India, the definition of “Madheshi” is contested. While political leaders representing Madheshis in Nepal continually attest to their “Nepaliness,” dominant discourses often categorize Madheshis as originating from and belonging to India (and thus undeserving of Nepali citizenship or resources). After Nepal’s armed conflict, Madheshi political movements have demanded a federal state for Madheshis and proportional representation as the people from this group have continually been excluded from political and economic resources.

the Naxalbari Uprising in India,⁶ in 1971, Nepali Communists also ignited a violent movement, which, as in India, was brutally suppressed by the state. In 1978, this group became the Communist Party of Nepal-Marxist Leninist (CPN-ML), and in 1990, CPN-ML merged with CPN-Marxist to form the CPN-United Marxist Leninist (CPN-UML) and became a major political party (Ibid).

The emergence of Maoism in Nepal is linked to the establishment of the CPN-Fourth Congress in 1974, which after a number of splits became the CPN-Unity Center (CPN-UC), the CPN-Mashal led by Puspa Kamal Dahal (“Prachanda”), and a breakaway faction of CPN-Mashal led by Baburam Bhattarai (Lawoti 2010:6). The United People’s Front Nepal (UPFN) led by Bhattarai was created by the CPN-UC to participate in elections, and then CPN-UC and UPFN split before the 1994 mid-term elections (Ibid). In 1995, the CPN-UC, under the leadership of “Prachanda,” was renamed the CPN-Maoist and initiated plans to start an armed conflict (Ibid:7). In February 1996, the Bhattarai-led UPFN submitted a list of 40 demands to the Nepali government outlining an ultimatum: “immediately initiate steps to fulfill these demands”... or “we will be forced to adopt the path of armed struggle against the existing state power” (40 demands as cited in Thapa with Sijapati 2004:215-216).

The leaders of the Maoist movements in both India and Nepal, despite their own positionality as highly educated and more privileged than “low” caste peasants, identified caste and ethnicity, along with issues of feudalism and land, as key issues to be addressed. The military tactics employed in both movements, in India beginning in the 1960s and, in Nepal in the 1990s, focused on increasing the power of the rural poor to establish strongholds and then take control of cities.

In both countries, the movements regained traction after increasing policies of economic liberalization. Nepal’s 10-year internal armed conflict ignited in February 1996 just days after Bhattarai sent a list of 40 demands to the government of Nepal, calling for, among other demands, an end to the domination of foreign capital and stated the “invasion of colonial and imperial elements in the name of NGOs and INGOs should be stopped” (40 demands as cited in Thapa with Sijapati 2004: 213). As Leve (2007: 128) argues,

⁶ In 1967, a violent uprising occurred in Naxalbari village in West Bengal during which peasants attacked local landlords, seized land, cancelled debts, and burned records. The uprising led to a larger movement, which spread rapidly, and inspired Maoist movements in both India and Nepal.

Despite the fact that millions of dollars had been devoted to rural development, the uneven distribution of aid benefits and political voice between urban centres and rural hinterlands, between rural districts, and between classes of rural and urban people themselves was recognized as a development failure and threat to the state.

While international aid and non-governmental organizations proliferated in Nepal before the armed conflict, foreign aid did not ameliorate rural poverty. Rather, the economic divide between those who benefited from development aid, primarily in Kathmandu, and people living in extreme poverty in rural areas, only increased, as development aid and its benefits were most accessible to elite, educated, urban residents. Donors and development organizations primarily operate out of Kathmandu, and before the armed conflict, failed to prioritize the structural changes that would have benefited marginalized and poor populations living in rural areas. Further, donors, including the World Bank, advocated for the decentralization of education in the 1980s. Private schools subsequently proliferated in the 1990s (NESAC 1998:87 as cited in Caddell 2006), which ensured increasing economic disparities between the poorest, rural residents and people living in the capital with greater access to financial resources.

During the armed conflict in Nepal, Maoists destroyed loan documents, redistributed land to the landless, and initiated development projects, such as small-scale industrial enterprises (Thapa with Sijapati 2004). Additionally, Maoists distributed food at low prices to families in need and encouraged inter-caste marriages. Taboos against widows and menstruating women were revoked and gambling, alcohol, and superstitious religious practices were banned. Further, private schools were shut down and teacher absenteeism ceased to be problematic in Maoist strongholds (Ibid).

In both India and Nepal, particularly post 9/11, Maoists have been labeled “terrorists” by the state enabling brutal state violence against civilians and combatants alike. While Nepal’s Maoist movement is commonly conceptualized in terms of civil war or an internal armed conflict, India’s Maoist movement is called an “uprising” or conceptualized as an eruption of violence. Drexler (2010) argues the language of “civil war” prevents justice within transitional justice contexts, because it obscures state violence and the complicity of powerful international forces. Calling an armed conflict a “civil war” attempts to “localize” the violence within a horizontal conceptualization by positing the conflict as between warring groups within a country rather than between a state and its citizens (Ibid). Further, the language of “civil war” obfuscates the complicity of powerful nations, and in Nepal, the increase in gross violations of human rights

following an influx of international aid to “combat terrorism.” For example, in Nepal, the United States (U.S.), India, and the United Kingdom (U.K.) supplied financial and logistical support to the Nepal government to fight the Maoists despite documented human rights violations by state security forces against civilians throughout the armed conflict. In this dissertation, I refer to the “internal armed conflict” or “armed conflict” rather than utilize the phrase “civil war” to describe the political violence in Nepal from 1996 until 2006. Scholars have drawn attention to how the ways in which political violence is framed can determine its legitimacy and conceal state terror and power inequities (e.g. Aretxaga 2001; Sluka 1999; Zulaika and Douglass 1996). As Sundar (2004) argues, “in the formation of the violent subject, the discourse of terrorism plays a central role in the Othering process by highlighting the culpability of the victims and downplaying other factors” (152).

Within these contexts, the ways in which identities, inequality, and exclusion are framed by the state and by Maoist leaders in India and Nepal have determined which people experienced gross violations of human rights. In both countries, Maoist leaders argued they were fighting for peasants and people belonging to historically marginalized caste and ethnic groups. In turn, state violence targeted those populations regardless of their sympathies or alignments with Maoist party leaders or combatants. In India, the state created, armed, and trained people for *Salwa Judum*, or “the purification hunt,” which burned villages, raped women, murdered civilians, and established holding camps in the name of fighting Maoist terrorists (Sundar 2016).

In Nepal, the government’s framing of Maoists as “terrorists” helped to garner international support for state-led violence and military aggression that was typically directed towards the most marginalized civilians. Significantly, the enactment of anti-terrorist legislation in November 2001 and subsequent financial and logistical support from the U.S., U.K., and India to “combat terrorists” coincides with the increase of state terror, especially enforced disappearances, in Bardiya (Human Rights Watch 2004; OHCHR Report 2012). Members of the Tharu community were disproportionately targeted by state violence and assumed, based on their ethnicity, to be “terrorists.” Further, the Government of Nepal announced cash rewards for the delivery of leaders of the Communist Party of Nepal-Maoist, likely inspiring an escalation in state violence as people were increasingly tortured by state security forces for information (personal interviews). Subsequently, in Bardiya, as in other parts of the country, civilians were taken from their homes, tortured, raped, killed, and disappeared by state forces (OHCHR Report

2012). In the 2008 report, the OHCHR investigated 156 of the 200 reported cases of enforced disappearances in Bardiya district, of which 14 were attributed to the Communist Party of Nepal-Maoist. State security forces were found responsible for the remainder of enforced disappearances. Both in the proliferation of enforced disappearances in Bardiya by state security forces and the violence enacted through *Salwa Judum* in India, they targeted civilians assumed to be aligned with the Maoists based on their ethnicity.

However, Nepalis who supported the Maoists cannot easily be homogenized (Shah and Pettigrew 2012), and the lived experience of conflict in Nepal was affected by numerous factors, including the geographic location in which people found themselves, their age, caste or ethnic group, gender, access to resources, political affiliation and their family's historical ties and relationships. Further, hierarchical expectations of social relations stratified by age, gender and caste were transformed by Nepal's conflict (Pettigrew 2001; Shah and Pettigrew 2012; Shneiderman and Pettigrew 2004). For example, the Maoists encouraged the practice of intercaste marriage, and Maoist cadres from the Dalit community entered "high"-caste households, led fighting units and eschewed traditional restrictions regarding the sharing of food and water (Gayer 2013). Yet, Pettigrew (2013) notes how during the armed conflict some villagers in a Tamu-mai village in Nepal perceived the entry of people from the Dalit community into their homes as a serious violation of caste norms and considered the practice the cause of unfortunate events.

Moreover, gender norms were simultaneously challenged and reinforced through the Maoist insurgency (Leve 2013; Parvati 2003a; Parvati 2003b; Shneiderman and Pettigrew 2004). The Communist Party of Nepal-Maoist demanded, "patriarchal exploitation and discrimination against women should be stopped" (40 demands as cited in Thapa and Sijapati 2004: 211). Females served in leadership positions in the Maoist hierarchy, as section commanders and vice commanders, and in all-female platoons (Parvati 2003a). However, regarding women's leadership in the Maoists, Comrade Parvati, the Central Committee Member and Head of the Women's Department of the Communist Party of Nepal-Maoist, argued that male cadres resisted surrendering "the privileged position bestowed on them by the patriarchal structure" (Parvati 2003a as cited in Shneiderman and Pettigrew 2004). Likewise, Pettigrew draws attention to how Maoist cadres' demands to stay in the homes of female villagers placed women in disempowered positions (Pettigrew 2013). Further, conceptualizations of women's empowerment by the

Maoists are rooted in homogenizing rhetoric that does not accurately define all Nepali women, particularly those outside of politically and economically dominant groups (Shneiderman and Pettigrew 2004; Tamang 2002).

Additionally, the Maoists called for an end to inequality perpetuated through existing power structures and an end to feudalism as perpetuated by the Nepali state. Maoist leaders argued, “land should belong to tenants” and “land under the control of the feudal system should be confiscated and distributed to the landless and the homeless” (40 demands as cited in Thapa with Sijapati 2004: 211). In Bardiya district, one of only two districts in Nepal where a majority of the population identifies as Tharu, many conflict victims viewed the armed conflict as a continuation of the struggle over land (Robins 2012). Additionally, many victims perceived soldiers in the Nepal Army to be enforcers of the power arrangements that left the majority of people from the indigenous Tharu community without access to resources, especially land, or political representation (Ibid). Guneratne, based on his longitudinal research in Nepal, draws attention to the dynamism of Tharu identity and the heterogeneity, specifically regarding access to power and resources, language and religion, among people who identify as Tharu (Guneratne 2002). Yet, he indicates that Tharu identity is intimately tied to a shared history of discrimination, exclusion and, as a result of national and international policies, the loss of land (Ibid). Nepal is divided geographically by the Terai (plains along the southern border with India), hills in the center, and mountains along Nepal’s northern border. The Terai, where Bardiya district is located, is rich in natural resources, and elite members of the Tharu community utilized the regions’ resources to build relationships with powerful leaders in the capital.

In the 1950s, with the encouragement of the leaders of the Nepali government and funded by international aid, the Malaria Eradication Program was implemented in the Terai. Following this program, “high”-caste Nepalis from the hills were encouraged by the state to move into the Terai, which ultimately resulted in the loss of land for members of the Tharu community (Guneratne 2002). Some “high” caste migrants exploited the existing *kamaiya* labor system, resulting in extended bonded labor practices, increased indebtedness, and marginalization for members from the Tharu community (Ibid). Within the *Kamaiya* labor system, established before the mass migration to the Terai, a cultivator offers food, clothing and shelter to a laborer (*kamaiya*) in exchange for labor. Yet, the traditional system occurred in a shared moral economy where the cultivator and the laborer shared ethnicity, often kinship, and little difference in

economic status (Ibid; Rankin 1999). Following the migration of “high” caste families to the Terai, the *kamaiya* system was transformed into debt bondage with entire families tied to dominant landlords socially removed from the Tharu community (Ibid). Tharu resistance to such exploitative labor practices was curtailed by violence perpetrated by landlords and the police, and, regarding the situation in Dang District, a report issued by a member of the Land Reform Commission in 1954 argued “the Government Offices meant for providing Justice take the side of the rich people and thus encourage further suppression of the poor” (Guneratne 2002: 98).

More people were forcibly disappeared from Bardiya than any other district in Nepal during the armed conflict. What was previously defined as the Mid-Western Region of Nepal, where Bardiya is located, is now commonly recognized as the region most affected by the conflict in terms of gross violations of human rights. A 2008 publication by the UN Office of the High Commissioner for Human Rights (OHCHR) describes how members of the Tharu community were targeted during the armed conflict:

Members of the Tharu indigenous group, who make up 52 % of the population in Bardiya District, account for over 85 % of the persons disappeared by the State authorities in cases documented by OHCHR. Among the victims [documented by OHCHR] were 123 men (including 102 Tharus), 12 women and 21 children. All the women and children [disappeared] were of Tharu origin. Information provided to OHCHR leads to the conclusion the majority of the disappeared were civilian villagers who were not CPN-M [Communist Party of Nepal-Maoist] members at the time of arrest. Most of the victims were farmers and others were labourers, students, teachers and carpenters. In addition to their occupations, several were prominent Tharu activists. The Tharus constitute one of the several indigenous groups that are historically marginalized and discriminated in Nepal. Many of the disappeared that were not Tharu were also from economically disadvantaged sectors of the population (OHCHR 2008: 6).

Robins (2011) contends the Nepal Army in the region had an interest in enforcing traditional power relations and disposing of Tharu activists. Many perceived the conflict as a continuation of a conflict over land between the Tharu community and “high” caste landlords (Ibid). A 2008 OHCHR Report recognizes “the root of the conflict” and the high number of enforced disappearances in Bardiya as connected to “issues of land distribution and lack of access to economic resources for marginalized groups, as well as discrimination, lack of political representation and lack of access to state services and protection” (OHCHR 2008: 7).

Since Nepal was united into a single kingdom in the 1700s, the Kathmandu Valley has served as the economic and political center for the country leaving Nepalis living in rural

villages to be excluded from access to resources and political power. When the armed conflict began in 1996, poverty rates in rural Nepal were twice as high as urban areas (CBS, Poverty Trends in Nepal 1995-1996). Inequality was exacerbated during the conflict, and by 2004, the poverty rate in rural areas was more than three times higher than in urban areas (Ibid, 2003-2004). Although Nepalis in rural areas were excluded from political power and basic resources, they were not spared from state violence before or during the armed conflict (Robins 2011, 2012; Shneiderman 2003; Thapa, et al. 2012).

The Comprehensive Peace Agreement and Transitional Justice

The conflict officially ended with the signing of the Comprehensive Peace Agreement by the Nepal government and the Communist Party of Nepal-Maoist in 2006. The cessation of conflict and the peace agreement ultimately emerged due to the rising unpopularity of the king, Gyanendra. According to official reports, in June 2001, Prince Dipendra shot and killed King Birendra, the Queen, and eight other members of the royal family. The king's brother, Gyanendra, then became king. It is widely speculated that King Gyanendra was involved in the deaths of the royal family. Following the killings, the mainstream political parties continued to support the monarchy. King Gyanendra dismissed parliament in 2002, and in 2005, dismissed another government that he had appointed, imposed a state of emergency, arrested political leaders, and established direct rule as the head of the government. This led the way for an alliance of Nepali political parties, known as the Seven Party Alliance, to join with the Maoists in peace negotiations and sign the 12-point understanding in India in November 2005. This, in turn, was the basis for *Jana Andolen II* (People's Movement II) in April 2006 when Nepalis demonstrated for 19 days across the country calling for the cessation of armed conflict, the restoration of democracy, and greater political and economic inclusion for marginalized groups. As a result of the demonstrations, the king reinstated parliament and returned power to political party leaders. Following the signing of the peace agreement in November 2006, the Maoists became part of the Nepali government as an official political party. In this dissertation, when I refer to the Nepali government or the Nepali state after the armed conflict, this is also inclusive of the Maoist party. My interviewees also now see the Maoists as part of the state.

Nepal's peace agreement is considered "revolutionary" in its explicit focus on economic and social justice (Pasipanodya 2008: 385). It stipulates an end to discrimination "based on class, ethnicity, language, gender, culture, religion, and region and to address the problems of women,

Dalit, indigenous people, ethnic minorities (Janajatis), Terai communities (Madheshis), oppressed, neglected and minority communities and the backward areas” and calls for “socioeconomic transformation” and a restructuring of the state (CPA 2006).

Measures under the framework of transitional justice, normatively argued to facilitate justice and reconciliation after the cessation of an armed conflict, were proposed in the peace agreement as a means to redress conflict-era violations of international human rights and humanitarian law. In the peace agreement, both sides to the conflict agreed to make public the names and addresses of people killed or disappeared during the conflict, provide information about the killed and disappeared to their family members, create relief and rehabilitation programs for victims, and establish a Truth and Reconciliation Commission. In addition, both sides agreed impartial investigations would be conducted and legal actions would be taken against those responsible for rights violations. Concerning children, both sides agreed to “immediately stop all types of violence against women and children,” and immediately rescue children affected and provide appropriate assistance for their rehabilitation. Regarding the redress of violations specifically affecting children, teachers, and education, the peace agreement states that the “right to education to all should be guaranteed and respected...[and] the right to education should not be violated... [and both sides] agree to immediately put an end to such activities as capturing educational institutions and using them, abducting teachers and students, holding them captives, causing them to disappear” (CPA 2006).

Despite a war that was fought on rhetoric espousing greater inclusion of marginalized groups, women and conflict victims were noticeably absent during the signing of the peace agreement. Powerful Nepali leaders have designed transitional justice processes, not as a post-conflict means to redress conflict-era violations, but to escape prosecutions for war crimes. Although Nepal’s government has remained unstable since the signing of the peace agreement, the most powerful leaders to both sides of the conflict have maintained power since it’s cessation. Further, scholars have drawn attention to how the mechanisms of transitional justice proposed in the peace agreement (i.e. truth commissions) were imposed by international actors and inappropriate for the Nepali context given the vulnerability and exploitation of the existing judicial structure and likelihood that “reconciliation” would be utilized for political gain and as a means to escape prosecution (Robins 2012; Sajjad 2013, 2016). For example, due to concerns over the prosecutions of Maoist leaders that could result from the findings of a truth and

reconciliation commission, Maoist leaders insisted on the establishment of a separate disappearance commission due to the majority of disappearances being attributed to state security forces (Sajjad 2013).

Further, as is typical, the role of international actors in human rights violations during Nepal's armed conflict was not acknowledged through the peace process. For example, although the United States Department of State acknowledged the government's dismal record of human rights violations in its annual human rights report, the U.S. supported the monarchy and supplied aid, equipment, and training to state security forces that was subsequently utilized in the killings and disappearances of civilians. Yet, processes of transitional justice offer no form of acknowledgement for international involvement in internal armed conflicts.

While victims' groups have continually expressed concerns that the truth commissions would be co-opted by powerful political leaders to ensure their escape from prosecutions, international consultants, along with the peace secretariat, introduced the idea of creating two truth-seeking commissions (Sajjad 2016). Thus, the commission envisioned in the peace agreement, and finally established in 2015, has served as a performance of "justice" rather than a commission to seek truth or ensure victims receive justice. Notably, the word "justice" was removed from the section on the truth commission in final peace agreement as a result of pressure from political party representatives. The only government-instituted comprehensive mechanism of transitional justice enacted prior to the truth-seeking commissions, which were established in 2015, was an Interim Relief Program established in 2008, awarding financial compensation, medical treatment, scholarships, and/or vocational training for some victims. Because the government refused to acknowledge complicity or express any form of regret regarding conflict-era human rights violations and since the program was introduced as humanitarian relief, the Interim Relief Program is not internationally recognized as a form of reparations. Children were specifically targeted for scholarships through the Interim Relief Program and were given priority in the Truth and Reconciliation Act and Rules. In Chapter 5, I analyze the scholarship provision included in the Interim Relief Program, and in Chapter 6, I examine Nepal's truth seeking commissions.

Nepal has a long history of state-sanctioned and internationally aided inequality and political violence, and the Maoists built the insurgency on the promise of uplifting marginalized groups in Nepal, including lower caste groups, indigenous people, women, and children. Yet,

despite the focus of the Nepali government on children in transitional justice policy and the focus of the peace agreement on redressing systemic economic and social injustice, I argue that the implementation of transitional justice mechanisms in Nepal not only failed to address victims' needs, it entrenched ongoing inequality, state-centric nationalism (Lawoti and Hangen 2013), and distrust in the national government.

Chapter 4

Children, Locality, and Transitional Justice in Nepal⁷

Children are often cited as particularly vulnerable to, and, along with women, the most affected by armed conflict (e.g. Impact of Armed Conflict on Children 1996; Parmar, et. al 2010; UN Approach to Transitional Justice 2010). Yet, despite the emphasis in international law, reports, and resolutions on their vulnerability and need for special protection during wartime (e.g. CRC 1990; Geneva Conventions 1949 and two Additional Protocols 1977; UN Doc. A/HRC/21/38 2012; ‘Security Council Resolution 1882,’ UN Doc. S/RES/1882 2009; ‘Security Council Resolution 1612,’ UN Doc. S/RES/1612 2005), people who experienced gross violations of human rights as children are rarely included in scholarly literature on transitional justice. When children are included in scholarship on transitional justice, discourses typically surround the reintegration and accountability of child soldiers (e.g. Parmar, et al. is the sole book dedicated to broadly examining children and transitional justice). Further, within conceptualizations of children and armed conflict, children within a nation-state, and often globally, are frequently homogenized. This homogenization risks overlooking which children are particularly vulnerable, in what context their vulnerability exposes them to gross violations of human rights, and how their diverse positionality impacts their lives after an armed conflict. Further, “childhood” is treated as a temporary vulnerability within international law that presumably passes when a person reaches the age of 18. From birth until the age of 18, international law (Convention on the Rights of the Child; Geneva Conventions and two Additional Protocols) codifies humans’ special entitlements and additional protection during armed conflict. Yet, transitional justice processes typically happen after an armed conflict has ended, and, in many cases, several years after its cessation.

Although children in Nepal were victims of direct violence during the armed conflict, including forced recruitment, abduction, torture, killing, maiming, disappearance and sexual violence (OHCHR 2012), this chapter focuses on children of the unlawfully killed and forcibly disappeared. Of the more than 12,000 people who were killed and 1,300 missing (Ibid), the majority were men, and many of those men were fathers with multiple children. In Nepal, the

⁷ An earlier version of this chapter was published in 2018 as “Intersectionality as Locality: Children and Transitional Justice in Nepal” in the *International Journal of Transitional Justice* 12(1): 64-87.

loss of a father carries severe and irreparable consequences for his children and entire family throughout their lives. To date, no scholarly research has examined the perceptions and lived experiences of the children of the unlawfully killed or disappeared during Nepal's armed conflict.

Focusing on the loss of a father illuminates how even for people who experience a similar violation of human rights as children, their lives are dynamic and diverse. Victims' diverse identities and their ongoing transitions are often overlooked in transitional justice discourses. Although the peace agreement was signed in 2006, during my fieldwork ten years later processes of transitional justice were ongoing, and, in some ways, only beginning. This chapter examines the perceptions of child victims of Nepal's armed conflict who have since transitioned out of what is recognized as a temporary phase in human lives known as "childhood" and are now, according to international law, adults. Through examining their perceptions as adults, I argue singling out biological age or any other singular characteristic or subjectivity as the critical determinant of why and how a conflict victim experiences vulnerability risks ignoring how their positionality correlates with differential experiences of both armed conflict and the transitional period.

I begin with a review of scholarly literature examining children and armed conflict and "local justice." I contend homogeneous and fixed notions of "children" within discourses on transitional justice fail to emphasize the transitions experienced in people's everyday lives. Then, I briefly review aspects of Nepal's history of systemic exclusion and marginalization, and outline my methodology. Next, I highlight children's dynamic and diverse experiences during Nepal's armed conflict and explore the perceptions of Nepalis who were children when their fathers were killed or disappeared during the armed conflict. Through examining their experiences and ongoing transitions, I challenge homogeneous and fixed conceptualizations of "children" and "the local" within the context of Nepal and argue for victim-led processes of transitional justice and the redress of structural inequality.

Children and Armed Conflict

Overwhelmingly, scholarly literature posits that people who have experienced armed conflict as children are traumatized and developmentally impaired (Barber 2009; Boyden and de Berry 2004). Further, UN agencies and international nongovernmental organizations defining and assisting in the implementation of transitional justice measures often treat the constructed

categories of “childhood” and “children” as static and universal. Thus, it is commonly taken for granted that people who have grown up during armed conflict may respond and adapt to the experience of political violence in a variety of ways (Boyden 2003; Kohrt and Maharjan 2009; Nordstrom 2006). The complexity of their experiences may be overlooked when a singular focus is placed upon the violations children have faced during armed conflict. As Boyden and de Berry (2004:xv-xvi) contend, “The suffering of war is not contained in a single traumatic episode, or even a multiplicity of such episodes, but in a complex interplay of detrimental circumstances that endure and change over time.”

This complexity is important to analyze within the context of transitional justice as scholars argue the varied experiences and positionalities of people affected by armed conflict as children impact their perceptions of and adaptation to post-conflict environments throughout their lives (Barber 2009; Boyden and de Berry 2004). The environment in which children live, as well as their families, identities, communities, relationships and access to resources are all significant to understanding their experiences of both wartime violations and processes of transitional justice. Homogenizing children affected by armed conflict overshadows the ways in which their prewar positionality creates conditions of vulnerability during armed conflict and differential lived experiences during processes of transitional justice. Further, this homogenization fails to highlight their resilience or ability to function despite having experienced gross violations of human rights and their capability to actively participate in the design and implementation of processes of transitional justice implemented on their behalf. Also often overlooked in transitional justice discourses are how child victims survive and cope with the resources available to them, how access to such resources is gendered or otherwise exclusive based on social distinctions, and whether such conditions predate the transitional period and are pervasive throughout its tenure.

Local Justice?

Based in international law and often implemented with the insistence of the UN and international donors and diplomats, scholars examining transitional justice have critiqued normative assumptions and emphasized the importance of understanding “local justice,” or the ways in which justice is understood, produced, experienced and perceived in specific localities (e.g. Hinton 2010; Shaw and Waldorf 2010). Particular attention has been given to how transitional justice mechanisms are implemented in ways that are considered “top-down” or

“elite-led” as opposed to “bottom-up” and “victim-centric” (LaPlante and Theidon 2007; Lundy and McGovern 2008; Robins 2011, 2012; Wilson 2001). Within dialogues on the global/local in transitional justice, encounters between “global mechanisms” and “local realities” are often understood as ones of “friction” (Hinton 2010; Tsing 2005). As scholars and practitioners have challenged global assumptions regarding transitional justice processes, “locality” has often been conflated with nationality and presented as opposed to “the global” (Shaw and Waldorf 2010). For example, in a report to the UN Security Council, Kofi Annan contends: ‘We must learn to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations’ (UN Doc S/2004/616 2004: 1).

In Annan’s report, attention is drawn to the importance of a national context but not the diversity of experiences within a nation-state. The conflation of the nation-state with “the local” ignores historical and existing power structures and ongoing marginalization within a nation-state. This conflation can reinforce homogenizing and exclusionary nationalist rhetoric and practices. Processes of transitional justice are often combined with liberal peacebuilding, and significant financial and logistical support from international donors is utilized for the transition of a nation-state from its previous form of government to a liberal democracy. The pervasive liberal peace model focuses on individual citizens rather than communities and systemically ignores structural causes of armed conflict and ongoing structural violence (Galtung 1969). Within these contexts, support is state-centric and focused on rebuilding the nation through constitution writing, elections and empowering national leaders, without challenging existing hierarchies of power and inequality (e.g. Richmond 2002; Robins 2013). Existing scholarship has illuminated how international influence over transitional justice processes imports and reinforces unequal systems of power and marginalizes the voices of conflict victims (Ní Aoláin 2009; Wilson 2001). Further, scholars have drawn attention to how processes of transitional justice are inescapably political (Hazan 2017) and highlighted how they are utilized or eschewed by national governments as a nation-building project (Wilson 2001) and a geopolitical strategy (Boehm 2017; Rowen and Rowen 2017). Within this model of post-conflict transition the homogenization of victims serves to reinforce the nation-building project without addressing ongoing structural violence.

As greater attention has been paid to the importance of the context in which mechanisms of transitional justice are implemented, scholars have challenged conceptualizations of “the local” in human rights and transitional justice discourses. This scholarship has illuminated how the binary global/local model can be teleological and analytically confusing (Goodale 2007), emphasized that “the local” is always part of national and global processes (e.g. Betts 2005; Hinton 2010), and indicated how conflating “the local” with “tradition” or “culture” can exclude the knowledge, experiences and priorities of people in particular localities (e.g. Shaw and Waldorf 2010). Further, interpretations of “the local” by those designing and implementing transitional justice mechanisms are deeply embedded in existing structures of power and inequality. Scholars and practitioners emphasizing attention to “the local” within processes of transitional justice often fail to examine how experiences of armed conflict and transitional justice differ within a nation-state. Ironically, while transitional justice is normatively understood as a time of transition, or a liminal state for governments and societies, conceptualizations of “the local” are often centered on customary law, rituals and cultural practices presented as “traditional” (Burnet 2010; Wilson 2001) or primordial and “static” (Sajjad 2013).

Homogeneous and Static “Children”

Likewise, “children” are often presented as static in discourses on transitional justice. The importance of children within processes of transitional justice is emphasized in scholarship and policy, but people who have aged out of this category of vulnerability are frequently subsequently disregarded. Does their experience of armed conflict as children influence their lives as adults or does their vulnerability end when they age out of the internationally defined category of childhood? Transitional justice policy, although predicated on an ideology of transition, fails to respond to victims’ dynamic needs during the “transitional period.” When policies are focused primarily on state institutions, such policies present a singular and solipsistic set of criteria for understanding “transition” and ignore other kinds of transitions at work in people’s everyday lives.

In Nepal, understandings of childhood are dynamic, diverse and not based solely on biological age (e.g. Kohrt and Maharjan 2009; Snellinger 2009, 2013). Existing research has illustrated how children are often perceived as transitioning into adulthood when they “become responsible” and “mature” by getting a job, becoming physically developed, focusing on their studies and understanding appropriate behavior (Kohrt and Maharjan 2009). Further,

conceptualizations of childhood differ within Nepal and are perceived differently according to gender and caste (Ibid), and understandings of childhood were challenged during Nepal's internal armed conflict (Pettigrew 2007). Children accepted the responsibilities of older family members who had died or been conscripted as Maoist cadres, and children were feared as possible Maoist informants (Ibid). Ten years after the signing of the peace agreement, most Nepalis who experienced gross violations of human rights as "children" (as defined in international law) had since transitioned out of that category. Further, the homogenization of children during Nepal's armed conflict ignores their diverse identities, dynamism and the systemic marginalization and exclusion of certain groups based on their gender, religion, language, ethnicity, caste and region of residence. As previous scholars have illuminated, utilizing the national level as a unit of analysis to study armed conflict fails to capture people's lived experiences and obscures international complicity and other dynamics crucial to understanding conflict, such as social, political, and economic factors (Drexler 2010; Lubkemann 2008, Shneiderman 2012; Thapa, Ogura, and Pettigrew 2012). Lubkemann (2008:28) argues there was not a single Mozambican war, and "when cast as a socially homogenizing, rather than socially informed, force, violence is inevitably operationalized at the largest scale of its occurrence-typically the nation" and calls for greater attention to the social condition of war.

Transitional justice processes always take place within politicized structures and can reproduce systems of power and privilege, and scholars have demonstrated how mechanisms of transitional justice can be exclusionary to victims (O' Rourke 2015; Sundar 2004; Robins 2012, 2013; Sajjad 2016; Wilson 2001). For example, processes of transitional justice often fail to examine patriarchy and gendered experiences (Aguirre and Pietropaoli 2008; Ní Aoláin 2009; Ní Aoláin and Rooney 2007). When gender is included in dialogues surrounding transitional justice, descriptions easily slip from gender to women (Porter 2016; Hamber 2007). Further, women who live through war and conflict cannot easily be homogenized (Simic 2016; Meintjes, et. al 2002). Consequently, scholars have called for greater attention to the concrete ways in which multiple inequalities are manifested simultaneously during armed conflict and in everyday life rather than reducing women to a single story of victimhood (Bueno-Hansen 2010; Rooney 2007), and have argued the interests of the most marginalized should be prioritized (Ní Aoláin 2009). Wilke (2003:137) contends, "Complex identities matter not only because we need to represent identities more carefully, or because current concepts of discrimination might be insufficient, but also

because they are targeted and mobilized in state violence.”

This was certainly the case during Nepal’s armed conflict, where civilians were targeted and mobilized based on intersecting facets of their identities. Both the Communist Party of Nepal-Maoist and the Nepali government targeted people based on their age, gender, caste, ethnicity, access to resources and region of residence. During my fieldwork, I heard many stories of hardship and barriers due to structures of power and inequality. As I listened to people’s stories and witnessed their lives, the complexity of the experiences and positionalities of people who were children during the armed conflict was evidenced, as was their resilience. Their stories of Nepal’s armed conflict and its aftermath cannot be reduced to one story of victimhood, and the “local” in Nepal cannot be conflated with the entire nation-state. My research revealed victims perceive their positionality as a primary cause of their experiences of human rights violations. Scholars and practitioners of transitional justice must question why certain children within a given nation-state experience gross violations of human rights and others do not. As Paul Farmer (2004:7) has argued,

Human rights violations are not accidents; they are not random in distribution or effect. Rights violations, are, rather, symptoms of deeper pathologies of power and are linked intimately to the social conditions that so often determine who will suffer abuse and who will be shielded from harm.

Likewise, Ní Aoláin and Rooney (2007: 347) contend, “gendered, social patterns of suffering are linked to patterns of inequality that preceded conflicts.” In Nepal, social patterns of suffering are linked to deeply entrenched patterns of inequality existent long before the armed conflict.

Children’s Experiences During Nepal’s Armed Conflict

Scholarly literature and reports issued by non-governmental organizations, international non-governmental organizations, and the UN emphasize children’s unique vulnerability during Nepal’s decade-long internal armed conflict (‘Conflict in Nepal and It’s Impact on Children;’ HRW 2004; Pherali 2011; Subedi 2013; UN Doc. E/CN.4/2006/107 2006). Yet, many Nepalis who were children during the armed conflict did not experience or even witness political violence; others were raped, tortured, abducted by the Maoists, arrested by state security forces; some endured the loss of multiple family members (personal interviews with conflict victims January-December 2016; OHCHR 2012). Both the Maoists and the state security forces targeted and mobilized children and their families based on their identities and subjectivities. In the

context of Nepal, family dynamics, geography, gender, ethnicity, caste, access to resources and political connections all determined which children suffered abuse or were shielded from harm. Children in rural areas were more likely to witness and be affected by political violence than children in Nepal's capital, Kathmandu (OHCHR 2008, 2012). Dalits and members of indigenous communities were disproportionately victimized and harassed by both government forces and the Maoists (Goyal, et al. 2005; OHCHR 2012; UN Doc. E/CN.4/2006/107 2006). Conversely, civilians with greater access to resources and from "higher"-caste groups historically associated with positions of privilege and power were also particularly vulnerable during the war due to their positionality (Amnesty International 1997; OHCHR 2012; Pettigrew 2013). From the first day of the armed conflict, not only did the Maoists violently target buildings and people associated with the state (e.g. police posts, administrative offices, loan documents in the government-owned agriculture development bank), they also attacked wealthy landowners, who were declared enemies of the party (OHCHR 2012). Pettigrew and Adhikari (2009) found the Maoists targeted villagers who were better resourced ("people with large houses, guns, money, and gold") when asking for food and accommodations. This, in turn, placed those villagers at an increased risk of being targeted by the Nepal Army, who were perceived as "trigger happy" (Ibid). Interviews and conversations with people from marginalized caste and ethnic groups who had access to resources and fled to Kathmandu during the armed conflict revealed how money and political connections to various political parties, including both sides to the conflict, also shielded some children and entire families from harm. Males were more likely to be killed or disappeared during the conflict (OHCHR 2012). Yet, when women and girls were killed, particularly by the Nepal Army, they were often raped first (Ibid).

There are discernible patterns of victimhood based on longstanding marginalization and inequality revealed through the analysis of reports on Nepal's armed conflict (Ibid; Goyal, et al. 2005, OHCHR 2008) further affirming the experience of armed conflict was not homogeneous for children in Nepal. For example, poor girls from rural areas who were members of "low"-caste or indigenous communities were more likely to be raped, killed or lose their fathers to enforced disappearance or murder than "high"-caste boys living in Kathmandu (OHCHR 2008, 2012). However, Nepalis were not immune to harm perpetrated by either side to the conflict based solely on their positionality. Being "high" caste or wealthy did not always protect Nepalis from state violence. Likewise, although the Maoists claimed to be fighting on behalf of women,

children, indigenous groups, “low”-caste groups and the poor, those subjectivities did not protect Nepalis belonging to these categories from violence perpetrated by the Maoists.

In the next section, I examine the experiences and perceptions of Nepalis who were children (according to international law) when their fathers were unlawfully killed or forcibly disappeared during the armed conflict. Although they were younger than 18 years of age when they lost their father, more than a decade has passed since the official end to the armed conflict. Their narratives reveal commonalities and differences, demonstrating the incongruity of conflating “the local” or “children affected by armed conflict” with the entire diverse nation of Nepal.

Children whose Fathers were Killed or Disappeared

Regardless of their positionality, children whose fathers were killed or disappeared during Nepal’s armed conflict faced considerable hardships. All the interviewees whose father was killed or disappeared lived with their father’s natal family during the armed conflict, as is the dominant practice in Nepal (see e.g. Tamang 2002 for the diversity of women’s experiences outside of dominant practices). While broad generalizations about Nepali children are inappropriate due to their tremendous diversity, regardless of their positionality, my interviewees consistently mentioned the stigmatization of children who lost their fathers during the armed conflict. The absence of their fathers forced them to endure stigmatization within their families, communities and/or schools. Although all of the interviewees were part of family units that consisted of siblings and a mother, they discussed being called “orphan” and “fatherless” by teachers and fellow students at school and when walking in their villages.

Gender norms vary in Nepal, particularly by ethnic group. Yet, predominant patriarchal norms in Nepal dictate that a child’s father determines belonging, both to the family and the nation-state. The Citizenship Act of 1964 linked citizenship by descent solely to a child’s father. This gendered notion of national belonging was reinforced through Nepal’s 2015 constitution, which limits a mother’s ability to independently bestow citizenship to her children. For example, the child of a Nepali mother and non-Nepali father can only acquire citizenship through naturalization. Nepal’s constitution also stipulates that the child of a Nepali mother can obtain citizenship by descent only if the child’s father cannot be traced. Thus, being Nepali is legally tied to having a Nepali father.

Although male and female children were equally likely to lose their father during the

armed conflict, their postwar experiences were highly gendered and the impact of the loss of their father exacerbated by gender norms. In Nepal, dominant norms dictate that men are the financial caretakers of their wives, children and elderly parents. The birth of a son is recognized as a permanent family member within their natal household. Conversely, dominant norms dictate that a daughter will reside with and take a dowry to her husband's natal family. Although there are multiple and complex variations on these practices throughout Nepal, the postwar experiences of my interviewees were impacted by dominant gender norms predating the armed conflict. Children's experiences of losing their fathers during the conflict subsequently became another aspect of their identities.

Likewise, interviewees discussed the stigmatization of their mothers who, following the loss of their husbands, were harassed by the Maoists and/or state security forces, refused assistance by government officials, stigmatized and called "widows," "whores" and "old women," viewed as polluted in their communities, and treated as burdens by their in-laws. Wives of the disappeared experienced additional distress and stigmatization due to their ambiguous identities as neither wife nor widow (Robins 2011, 2012). Within these contexts, I heard numerous stories of and witnessed everyday resistance to the stigmatization faced by the interviewees and their mothers. Some interviewees' mothers joined victims' organizations, rejected the label of "widow" and lived outside of their in-laws' homes. As children, some interviewees refused to stop attending school regardless of the stigmatization they faced by fellow students and teachers. The stigmatization faced by conflict victims during and after the armed conflict demonstrates how systems of patriarchy, caste-based and gender-based discrimination, and other forms of systemic oppression and structural inequality, are reinforced and contested in everyday life in Nepal.

For better-resourced interviewees who were able to relocate to Kathmandu, life in Nepal's urban center offered them an opportunity to escape the stigma they endured in their villages. The urban space served, at times, to give them a sense of anonymity and separation from reminders of the loss of their father. All interviewees perceived the loss of their father as the cause of their inability to obtain greater access to education and financial resources, and they associated their father's death with his positionality, including his caste or ethnic group, access to resources, residence and gender. The Transitional Justice Reference Archive (TJRA), which documented violations of international law during Nepal's armed conflict, and the 2012 OHCHR

Nepal Conflict Report (citing the TJRA), attribute the majority of “unlawful killings” to the Maoists and the majority of “enforced disappearances” to the government of Nepal (TJRA, as cited in OHCHR 2012; OHCHR 2008). While some interviewees whose fathers were disappeared clearly communicated distress due to their father’s ambiguous status and expressed desires for a funeral ceremony and greater knowledge about the events related to his disappearance, most interviewees stated they were certain their fathers had died during the armed conflict. Despite this certainty, children of the disappeared faced additional difficulties. They lamented their inability to acquire a death certificate and thus the necessary documentation to receive citizenship and their father’s financial assets.

In conversations and semi-structured interviews with children of the disappeared from the Tharu community in Bardiya, respondents expressed feeling that the state was anti-Tharu and their ethnicity was the reason for their parent being targeted during the armed conflict. After the conflict, females and males expressed their hardships as directly related to their own age and gender, access to resources, and the difficulties associated with the loss of the male head of household and primary breadwinner. Reema, a female member of the Tharu community, described in the Tharu language the night her father was disappeared:

The police arrested my father when he was asleep. At midnight, I think it was 12 o’clock; they arrested him and took him away... They [Nepal’s security forces and Nepalis who are not members of the Tharu community] treat Tharu people bad wherever they go.

Speaking of the impact of her father’s disappearance, Reema continued,

It had a huge impact. We were small, and my mom was alone. The other family members (paternal grandfather, paternal uncle and his wife) would not love us, since we were all girls. [Because my father was disappeared], the police also tortured my family... Sometimes, when money is scarce, I remember my father. Since father is not there, people scold me. So, I feel sad. There is no male member, so they scold.

Reema, who was 19 at the time of the interview, spent her days helping her mother with household chores and working outside the house. On a typical day, she cooked food, cut grass and fed the goats her family received from the International Committee of the Red Cross (ICRC). Reema said she was unable to complete her education due to the lack of resources at her school. Because she was unable to educate her, Reema’s mother told me she planned to get Reema married in the next year.

Male children faced other barriers, with the eldest son sometimes being expected to take

on the role of the primary breadwinner. Juktikal, a male member of the Tharu community, explained in the Tharu language:

He [my father] was arrested and then killed by the police. I was 10 or 11. My father was the one who used to earn...So, on the one side, I had to earn, and on the other side, I had to study. I had to look after the house. The eldest son had to bear the responsibility, so I had to bear it...The responsibility of agriculture was on me. The responsibility to educate my sister was on me, and all the responsibility to go to the field was on me. My mom used to sell vegetables, and we used to raise goats and chickens and sell them.

Rather than viewed as a financial burden, his new positionality placed him in a crucial and respected position in terms of his family's survival. Juktikal told me that his father was Tharu and killed by the police while he was traveling in a neighboring district. Juktikal said he had heard from eyewitnesses that the police asked his father where he was from, and, after responding that he was from a village in Bardiya, they killed him. The police, Juktikal assumed, killed his father because he was a member of the Tharu community from Bardiya, and he believed his father's remains were in the jungle of a neighboring district. Both Reema's and Juktikal's fathers are listed as missing by the ICRC. Female interviewees, including Reema, commonly expressed feelings of physical and financial insecurity due to the loss of their fathers. Reema and Juktikal were noticeably thin and expressed ongoing distress regarding their lack of access to education and basic resources, including food. Further, they both expressed feeling as if they were doubly stigmatized for being Tharu and viewed as fatherless.

Although state security forces targeted members of the Tharu community due to their ethnicity, they were not excluded from violence perpetrated by the Maoists. Sumitra, a 21-year-old female interviewee from the Tharu community in Bardiya, described the day her father was abducted and killed by the Maoists. Sumitra's father supported the Nepali Congress Party, a political party associated with the Nepali government during the armed conflict, and opposed the Maoist insurgency. She expounded in the Tharu language,

[The Maoists came in our house at night and] took my father saying, 'we have some work.' Immediately after that, they locked the door and said, 'we will cut you, kill you.' They locked the door, so that we could not go outside. They turned off the lights, and at that time, there was no light. After ten or fifteen minutes, [upon mom's insistence], we came out breaking the door. We all started to search for my father walking in different directions, but he was taken away from the main road. We asked for help, but nobody came. Later, we knew the Maoists had threatened the villagers that if they helped, they would be shot and killed. We searched but could not find my father. Five minutes after we reached our home, we heard the gun shot. Then, we started crying thinking that our

father is no more. Where to go for searching my father? Even then, we started to search... After the murder, we searched but could not find him...My father's sister came to our house and informed us [he was dead], and we all started crying. We left for the place where the dead body was placed, and we saw blood spots on the road. Then we knew my father was killed. We ourselves carried him. Nobody helped.

Sumitra's mother said when she attempted to receive help from the Nepal Army after her husband's death, she was turned away, "kicked" and "scolded." Despite her husband's opposition to the Maoist insurgency, Sumitra's mother's gender and ethnicity delayed her ability to acquire assistance from state forces. Sumitra described being called an orphan at school by students and teachers and detailed how fellow villagers refused to let her mother touch their food for fear of bad luck. When I interviewed Sumitra, she and her mother continued to face stigmatization as members of the Tharu community, as females in a home without male members, and as victims of the Maoists in a majority Tharu village where most victims of Nepal's armed conflict were victims of state security forces. As a result, Sumitra lamented how other victims in the village failed to communicate information about any programs implemented to assist conflict victims due to their perceptions of her. Although he had left the village, Sumitra's brother sent money to their mother. In addition, Sumitra and her mother received a small income from their occasional work in the village and harvested their own food.

People who are considered privileged by Nepali standards were also targeted during the armed conflict based on their positionality. The Maoists targeted civilians based on their above-average access to resources, education level and associations with people in positions of influence and power (OHCHR 2012; Pettigrew 2013). The leader of a national victims' group suggested I talk to Sunil. I called him, and he asked me to meet him at a popular bus park in Kathmandu. Sunil arrived on his motorcycle, and we went to a restaurant nearby. As I sat across from him at the restaurant, I noted his appearance. I guessed Sunil was around 5'10" and weighed about 200 pounds. He wore what looked like new clothes: a plaid button-up shirt, blue jeans and black tennis shoes with a large silver watch. As we waited for *momos* (dumplings), drinking Sprites, I asked him to tell me about his family. He said in English,

I am born in a middle class family, me, myself, brothers and two sisters. When I was 12, I lived in [a district outside of Kathmandu]. My father was a teacher and master of a government school. My mother was a housewife. She is a social worker, too, an educated woman in my village. In our village, my family is educated in comparison with other families, because it is a rural area.

As we continued talking, he also said his family was very respected in their village due to their “high”-caste status as Brahmins and level of education. Sunil explained that his family had greater access to financial resources than other families in his village. He believed his father was targeted due to these factors.

The terrorists of the Nepal Government (Maoists) killed my father when I was 12. My brother was in Kathmandu at that time. Mother had made food for us that night, and we had guests in our home. We were having dinner when two people called my father. They said they had some work with him. I said, ‘I want to come with father,’ but they said, ‘you are too small, you cannot come,’ and I cried. My mother was awake, waiting for him the whole night, but he did not come back. I also did not sleep till 11 or 12. My mother, early in the morning the next day, went to another village searching for my father, but she did not find him. Then me, my father’s brother, and [my] sister went near from our land, and I saw my father’s dead body, and I cried, and the villagers came. They killed my father because he was educated. Villagers used to follow what he said and respected him. So, the Maoists might have thought if they kill my father, everyone will be in their power.

As Sunil and I continued to talk, he described aspects of his life after his father’s death. Like Reema, Juktilal and Sumitra, he and his family began to face stigmatization in their village. Yet, unlike Reema’s, Juktilal’s and Sumitra’s families, Sunil’s family had access to resources to leave the village. Because Sunil was male, he was sent out of the village within a year for better educational opportunities while his sisters remained in the village. When Sunil was 13, he moved to Kathmandu, lived with his maternal uncle and attended private school. His entire nuclear family eventually left the village, with one brother working in the US, another brother and his mother living together in Kathmandu, and his sisters living with their husbands in other cities in Nepal. His family, he said, continues to own land and a house in his natal village. Like many conflict victims who relocated to Kathmandu during the armed conflict, Sunil utilized his change of residence as a means to escape the social stigma related to his father’s death and took advantage of the increased educational and employment opportunities available in the capital. Sunil was 28 at the time of the interview and had just completed the coursework for his bachelor’s degree in management. He is currently running his own non-governmental organization in Kathmandu.

Other interviews with Nepalis whose fathers were killed or disappeared complicated common narratives of the armed conflict and further emphasized the need for attention beyond

homogeneous conceptualizations of victims in processes of transitional justice. Sumedh, who was 25 years old and residing in Kathmandu at the time of the interview, described his family's positionality within their village (in a district outside of Kathmandu) and how he thought it was related to his father's disappearance by the Nepal Army. He specified in Nepali,

Our family was rich at that time [during the conflict], because we are Brahmin caste. In Brahmin caste, all people respect us. My grandfather was a landlord and was an intellectual person in the village. My father was also an intellectual person. We owned lots of land. In the village, we were rich among other people. Then that was good. At that time [during the conflict], my father and my brother were taking a bus to Kathmandu. I was 12 years old and studying in class 6, and my brother was studying in 8 class. At that time, the Army force was searching buses and people's bags on the way to the next district. In my father's bag, he had lots of documents and money. He had around 50,000 to 80,000 rupees (US\$500–\$800), and they [the Army] asked him why he had lots of money. They arrested him. They said to my brother, 'in the evening, we will return your father.' They said that, but they didn't return him. My father was a normal person. He was not involved in any political party. When my mother, brother, and grandmother went to the Army barracks and asked why he was arrested, a person came out and scolded my family and beat them with pipes.

Although they had greater access to resources and were "high" caste, the positionality of Sumedh's family did not protect them from state violence during the armed conflict. Yet, his family's wealth provided him with the resources to complete his master's degree after the disappearance of his father.

Although the data presented in this chapter correlate caste status and access to financial resources, they cannot be conflated. In Nepal, being higher caste does not necessarily mean having greater access to resources. Likewise, belonging to the Tharu community does not necessarily indicate a family's financial standing. However, access to resources in Nepal is correlated with historical patterns of exclusion and marginalization. All the interviewees in this chapter perceived the loss of their father as connected to their family's positionality and described similar experiences of stigmatization. Most interviewees' access to education and basic resources following the loss of their fathers depended on preexisting conditions of hierarchy, marginalization and their families' access to resources.

Reema, Juktalil, Sumitra, Sunil and Sumedh all emphasized that continuing their education was very important. In Nepal, the School Leaving Certificate (SLC) is known as "the iron gate." Failing the SLC prevents many students from advancing from grade 10 to what is referred to in Nepal as "plus two" (grades 11 and 12). Completing "plus two" is a necessary step

to go on to post-secondary education in Nepal. The disparity in the SLC pass rate between students who attend public school and those who attend private school is remarkable. According to the District Education Office in Bardiya, the SLC pass rate for children attending public schools is 22 percent, while children in private schools have an 85 percent pass rate. Nepal's national discrepancy in the SLC pass rate for public and private school attendees is almost identical to the situation in Bardiya district, with slight annual variations. Reema, Juktal and Sumitra all attended public school in Bardiya. Sunil and Sumedh attended private school in Kathmandu. Despite Juktal's increased responsibilities as the eldest male in his family, he passed his SLC and was able to complete his "plus two." Juktal was among a minority of students, regardless of the experience of losing his father, who attended public school and passed the SLC. Yet, Juktal, 27 at the time of the interview, was, at that point, unable to continue to postsecondary education due to family obligations and a lack of financial resources. Sumitra also passed her SLC and started pursuing her bachelor's degree. However, poor health and lack of access to sufficient resources, including healthcare, prevented her from attending classes. All the interviewees prioritized education, but their varied positionalities determined their access and ability to pursue educational opportunities.

Although they were all younger than the age of 18 and considered "children" according to international law when they experienced a gross violation of human rights, their age at the time of the violation, gender, education level, access to resources, birth order, family support (or lack thereof) and caste or ethnic group have affected their lives during the "transitional period." Reema was not opposed to prosecutions. Juktal stated explicitly he would like the police who killed his father to be prosecuted. However, in their interviews, they both prioritized access to education and basic resources. Sumitra said the most important needs of conflict victims were education and access to jobs and also expressed an explicit desire to see the people responsible for her father's death punished. Conversely, Sunil emphasized a desire to receive "firstly, the reason of my father's murder and punishment of the wrong doer [who killed my father], and secondly, support for my family and my further studies."

Yet, processes of transitional justice often fail to acknowledge victims' differential experiences, needs and perceptions within a nation-state. When I asked him how he felt when his family received money from the Nepal government as relief for his father's disappearance, Sumedh said, "We are not happy. We don't need money. We need our father." As Sajjad

(2016:30) has argued, “identification of the homogeneous victim in need of salvation primarily through financial assistance has been a consistent but oversimplified theme in Nepal.” Despite Robins’ (2011: 85-86), argument that “the needs of victims’ families are not static” and his finding of “dramatic differences” in victims’ perceptions of justice based on their positionality, transitional justice policies in Nepal have framed children affected by armed conflict as static and homogeneous.

Reema, Juktilal and Sumitra all viewed the postconflict national government as anti-Tharu. While caste and class cannot be conflated, government-supported suppression of the Tharu community is linked to their significantly lower access to resources, particularly land. After the loss of their fathers, Reema, Juktilal and Sumitra were all expelled from their fathers’ natal homes. This was due not only to entrenched systems of patriarchy where a child’s father marks their own familial belonging but also to their paternal family’s lack of access to resources. Conversely, Sumedh’s paternal grandparents had acquired sufficient wealth before his father’s disappearance to maintain their survival in his absence, and it was Sunil’s maternal family that ensured his access to higher education in Kathmandu. For Sunil and Sumedh, leaving their villages and residing in the nation’s capital also provided them the anonymity to escape social stigma. Although Sunil and Sumedh benefited from existing hierarchies, they both explicitly indicated their desires for, and were actively working towards, more equitable access to resources for marginalized populations. While being male, “high” caste and having access to resources could not mitigate the emotional or financial impact of losing their fathers, their prewar positionality determined their access to resources after the war. Even within the same nuclear family, gender norms determined access to education. Additionally, despite their positionality, Sunil and Sumedh expressed feeling marginalized and disconnected from the national and international political elites determining transitional justice policies and implementation.

The postwar differential experiences between victims are microcosms of larger systems of structural inequality. Although victims in Nepal come from diverse positionalities, the vast majority lack access to political power and are excluded from decisions about processes of transitional justice implemented on their behalf. Since the signing of the peace agreement, international and national elites have dominated transitional justice processes and privileged the promulgation of the constitution and national elections over redressing conflict-era violations

and ongoing structural violence. The peace agreement called for social and economic justice after the war. Yet, structural violence continues to impact the lives of children throughout Nepal, who face inequitable access to education, healthcare and food. Higher education was a key concern and desire for all of my interviewees, but structures of inequality systemically prevented some victims from continuing their education. When I asked interviewees why they wanted to pursue higher education, they linked education to dignity, jobs and greater access to resources. Regardless of their positionality, they felt disempowered by the loss of their fathers and excluded from what they viewed as elite-led processes of transitional justice. Activists and scholars have argued for greater inclusion of victims in processes of transitional justice in Nepal and spoken out against the orchestrated dependence of victims on elite-led national and international agencies to speak on their behalf (Robins and Bhandari 2012). Examining child victims' diverse and dynamic experiences reveals the need for the transformation of hierarchies of power, domination, and exclusion.

Conclusion

The narratives of people who lost their fathers during Nepal's armed conflict suggest locality cannot be conflated with nationality. Rather, analyses of victims' perceptions and everyday lives illuminate the complexity and dynamism of the experience of victimhood for children. All victims of Nepal's armed conflict, regardless of positionality, deserve equal access to justice (however they conceptualize and prioritize the concept).

It is important to examine what actually changes through processes of transitional justice. I argue for greater attention to the transitions occurring in people's everyday lives. Yet, also unexamined or redressed through transitional justice processes are entrenched systems of power and inequality. The homogenization of victims suppresses attention to and the redress of the structural inequalities intimately tied to Nepal's armed conflict. So long as powerful elite actors drive transitional justice processes without prioritizing victims' inclusion, acknowledging victims' diversity, and redressing structural inequality, what meaningful transition will occur?

Hierarchies of power can be shifted to empower conflict victims. Recognizing hierarchies among victims does not preclude their ability to design inclusive victim-centric processes of transitional justice. As Gready and Robins (2014) argue, scholars and practitioners must ask how they can create space for locally led solutions and then provide the requested resources to aid and empower conflict victims to implement their own processes. "Local justice" must move beyond

essentialism and nationalism, and, further, redress entrenched systems of domination and inequality. When oppression, marginalization, and deep-seated inequality are recognized as significant factors to an armed conflict, the refusal to redress such conditions is sure to entrench them.

Chapter 5

Scholarships for “Children Affected by Armed Conflict”

“Parents don’t know the significance of education for their child. That is the main thing.” I was at the district education office sitting next to Balkrishna, an education officer, government official, and gatekeeper of scholarship implementation in Bardiya district. As Balkrishna was explaining to me the reason why children in Bardiya fail or drop out of school, it struck me as ironic that he was simultaneously signing forms brought in by parents to be reimbursed for their children’s school snacks. He sat behind his desk dressed in a clean suit as he was signing forms one after the other and then dismissing the parents-mothers and fathers whose clothes were worn and hands were rough, presumably from agricultural work.

In my conversations and interviews in Bardiya district, I heard over and over again how important education was for individuals and their entire families. I thought back to the day I sat outside across from Pradesh, a young man from the Tharu community whose father was disappeared by the Nepal Army, as he took a break from working in the field. To my question, “what were the effects of your father being taken?” he responded, “The effect is that I didn’t get a chance to study in school.” He continued, “The basic need of the conflict victims’ families is that their children should get a chance to study up to intermediate level.” When talking about his hopes for the future, he said, “I am ready to remain hungry, but I will make my children educated.”

Pradesh’s emphasis on education being both one of the most significant consequences of the armed conflict and one of his family’s greatest needs was common for victims that I spoke with in both Bardiya and Kathmandu. Yet, access to education before, during, and after the armed conflict varied significantly for victims of Nepal’s armed conflict. In the last chapter, I argued transitional justice policy often homogenizes victims and fails to respond to their diverse and dynamic needs during the transitional period. Concomitantly, I showed how life transitions for those affected by conflict as children are simultaneously homogenized by the static category of “childhood.” In this chapter, I examine the meanings that victims and their families in Bardiya assigned to education and their experiences of inequitable access to scholarships targeting “conflict affected children” as part of Nepal’s Interim Relief Program. I begin the next section with a conversation I had with one of my friends in Bardiya that illustrates a common narrative about the historical significance of education and how education (or lack of) is utilized to explain

inequality according to caste, ethnicity, gender, and other identities. I argue that discourses of knowing/not knowing are instrumental in the concealment of power and the perpetuation of marginalization and structural inequality in Nepal. Through examining the scholarship provision for “conflict affected children,” I contend the barriers conflict victims in Bardiya experience trying to access scholarships demonstrate not only that structural inequality still exists during the “transitional” period but also that the state is committed to maintaining it.

(Lack of) Education and (Not) Knowing as Proxy

On a temperate day in February in a rural village in Bardiya, my friend Arita and I were sitting together looking out at a rice field. She explained to me, “there is tension between the landlords and the Tharu, because they illegally took Tharu land and took advantage of them. Tharu people didn’t understand the documents they were signing, because they could not read.” Arita, 22 at the time and a member of the Tharu community, was explaining this to me in English. She was educated in English medium schools in Kathmandu, as was her father. She described what she perceived as the historical and ongoing intention of powerful political leaders to marginalize people from the Tharu community by deceiving them, and she described “Tharu people” as “unsuspecting,” “simple,” and “backward.” Although she and her father had been educated in Kathmandu and both spoke English fluently, she attributed the financial losses of her paternal grandfather to his trust of others and not being formally educated. She said,

Many people have taken advantage of my grandfather, and they have convinced him to give them his money. One time a man came and stayed with my grandfather for a couple days and convinced him to put a tractor in his name, and my grandfather did it. Then, he was making payments for a long time in someone else’s name. The payments were not always being counted, because the person taking the payments was not recording that they were receiving the money. My grandfather spent all this money and lost the tractor, because it was in this other person’s name... That is why my father wanted to become educated, things like this.

In conversations with people inside and outside the Tharu community, and in Nepali books explaining Tharu people, the community’s “backwardness” and “simplicity” were described, typically in the same conversation/book, both as primordial and as due to their lack of education (i.e. formal schooling).

In the context of Nepal’s armed conflict, discourses about knowing, consciousness, and education hold significant meanings. On one hand, “Nepalis who participated in the Maoist movement were often represented [by Western observers and the Nepali elite] as victims of a

sort of false consciousness, or worse, of no consciousness at all” (Shneiderman 2012: 67). On the other hand, lack of education/not knowing has long been an explanation of inequality/marginalization (e.g. the Tharu exploitation by more educated, literate landlords), and teaching basic literacy has been utilized by Nepali activists seeking to build political consciousness, for example, among Thangmi villagers (Shneiderman 2013) and as a platform for building a movement against exploitative landlords through educating the Tharu (Guneratne 2002). Guneratne argues that the conceptualization of “Tharus as a backward group, illiterate and therefore underprivileged, is an important organizing symbol of their identity” (2002: 194). It is around this central narrative of exploitation by educated, “not simply landlords” but by high-caste hill people “in unambiguously ethnic terms” that elite Tharu leaders began organizing members of the Tharu community in the 1950s for greater access to political power and resources (Guneratne 2002). In his research on the making of the Tharu identity in Nepal, Guneratne found that members of the Tharu Welfare Society

like Tharus in general, believe that it is through education that the welfare of the Tharu may be assured. The catalyst for the founding of the [Tharu Welfare Society] was the perception that the Tharu were backward, and the necessity to make their status equal to that of other castes (*jat*). The causes of this backwardness was identified as the general illiteracy of the Tharu, which made them vulnerable to exploitation by other groups, and the consequent inability of the Tharu to produce the doctors and engineers who, by virtue of their professional status, might raise the status of the group as a whole. Education has been seen as the means by which a “backward” society may be transformed to a “forward” status (Guneratne 2002:139-140).

Ironically, the education of some elite members of the Tharu community in India, along with development agencies reinforcing ideas of villagers as backward and uneducated, contributed to social constructions of marginalized groups in Nepal as ignorant (Guneratne 2002; Pigg 1992, 1995). In Pigg’s 1992 study of the introduction of development discourse into Nepali communities, she argues that such introductions frame the direction of progress from rural to urban and alter what it means to be a villager. She contends,

The “ignorance” of villagers is not an absence of knowledge. Quite the contrary. it is the presence of too much locally-instilled belief... The problem people working in development will tell each other and a foreign visitor, is that villagers “don’t understand things.” To speak of “people who don’t understand” is a way of identifying people as “villagers.” As long as development aims to transform people’s thinking, the villager must be someone who doesn’t understand (Pigg 1992: 17, 20).

In Nepal, education is utilized as a marker of social status and is measured by phrases to describe people, such as “educated,” “uneducated,” “backward,” statements like “she could/could not write her name,” and the answers to a common question utilized to mark status, “up to how far have you studied?” including “up to class ___,” “SLC pass,” “plus two,” “bachelor’s.” Formal education (i.e. schooling) in Nepal has a long history of being a marker of social standing and access to resources. Every parent I met in Nepal, regardless of any aspect of their positionality, prioritized formal education (i.e. schooling) for their children. For both male and female conflict victims, education was explained in interviews and conversations as means of upward mobility through a greater chance at employment, and thus income and resources. Yet, in the same interviews and conversations, people would describe how jobs in Nepal are acquired through nepotism, lament how there are no jobs in Nepal, and discuss the advantages of seeking employment outside of the country.

While it is connected to aspirations for greater economic opportunities, being an educated person holds additional meanings and value. To be an ‘educated person’ in Nepal is associated with dignity and perceived higher social standing. Previous scholars have argued conceptualizations of the ‘educated person’ influences expectations for formal education to be transformative in Nepal (Levinson and Holland 1996) and found that young people view learning the Nepali language in school as necessary for them to “make their way in the world” (Noonan 1996: 5) while learning English was a means to reach a “world of promises and new opportunities” (Valentin 2011:110; also see Caddell 2006; Liechty 2003; Pradhan 2016). Rather than viewed strictly as a stepping stone for personal achievement, existing scholarship has illuminated how students also view education as way to help develop the nation and be of service to their communities (Fujikura 2003; Skinner and Holland 1996; Snellinger 2016).

Yet, education in Nepal has always been exclusionary and connected to elite power. Under Rana rule (1846-1950), only the ruling elite were permitted by the state to be formally educated. Following the end of Rana rule and the implementation of multi-party democracy in the 1950s, schools were established throughout the country, including elite private schools predominantly run by missionaries in Kathmandu (Caddell 2006). During the Panchayat era (1960s-1990s), homogenous nationalist discourse was strongly promoted by the state through the slogan *ek bhasa, ek dharma, ek bhes, ek desh* (one language, one religion, one form of dress, one country). While schools were nationalized in the 1960s and 1970s and accompanied by

nationalist curricula, donors, including the World Bank, encouraged the decentralization of education in the 1980s, and private schooling proliferated in the 1990s (NESAC 1998:87 as cited in Caddell 2006). Caddell (2006) argues, the dream of educational opportunity expanded in Nepal [in the 1990s] due to optimism that multi-party democracy would lead to greater equality and inclusion, and as she contends, significantly, “with educational opportunities opened to all through the expanded government school system, the search for ways of differentiating achievement intensified” (468).

The bar of achieving status as an “educated person” was raised when marginalized communities gained greater access to education; a significant marker of social status in Nepal is now attending private school, especially elite English-medium schools (Caddell 2006; Liechty 2003). As public education became more accessible, the liberalization of the education market and the proliferation of private schools ensured that Nepalis with the greatest access to resources retained or increased such resources. The proliferation of formal schools in Nepal has, rather creating equal opportunities for historically marginalized groups, entrenched hierarchies of power and inequality. Scholars have criticized the influence of donors, such as the World Bank, for the continued exclusion of marginalized groups from and through education. For example, Mikesell (1993:32) argues, schooling in Nepal is

an imposition onto the village communities of an alien system of knowledge, priorities, values and methods evolved from Western colleges of education. Classroom discipline, examinations and certification authoritatively determine what is "true knowledge," and devalue the knowledge, practices and languages of the villagers... An immense class of people is presently being schooled in Nepal to despise their own rural background.

An explicitly stated intention of formal education in the 1990s was to promote an attachment of youth to a developing Nepali nation (Fujikura 2003), develop democratic institutions, and foster democratic attitudes and values in children to promote nation-building (Carney and Bista 2009). Pherali (2011:144) argues,

The process of forming ‘a uniquely Nepalese identity’ permeated the concept of the modern national education system, which largely denied the existence of ‘a dynamic tension with regional and ethnic identities’ undermining the significance of indigenous language and culture (Pigg 1992: 497). Educational provision for Janajati (tribal) or Aadibasi (indigenous) children was often non-existent since Nepali, the medium of teaching and learning at schools, was not often their mother-tongue and the curricula were often too ‘foreign’ to engage with... Even in 2001, a full decade after multiparty democracy was restored, equal rights were spelled out in the new Constitution, and

educational ‘development’ efforts intensified, literacy rates among Brahmins, the so-called upper caste, were 70% as compared with a dismal 10% among the several low-status caste groups (Central Bureau of Statistics 2003). This was a failure of externally led development to address the country’s most pressing social problems.

Thus, following the establishment of multi-party democracy in the 1990s, education in Nepal served to contribute to a façade of democracy and equality while systemically ensuring the continued marginalization and poverty of the majority. Although he contends that Nepal’s education system was both alien and alienating, Fujikura (2003) argues the Maoists built on the nationalist rhetoric promoted through formal education to produce alternative visions of nation-building and progress through armed struggle.

Education and Nepal’s Armed Conflict

Schools were critical sites during Nepal’s armed conflict. Scholars have described education in Nepal as “one of the main causes of the violent conflict” (Pherali 2011: 135) and as schools as “battlefields” (Caddell 2006). The Maoists used schools as hideouts, to conduct cultural trainings, and to recruit and abduct children for conscription into the People’s Liberation Army (Subedi 2013; Shneiderman and Turin 2004; van Wessel and van Hirtum 2013). Teachers and principals were also specifically targeted by the Maoists and often abducted, mutilated, and killed (Pherali 2011). For the Maoists, teachers were targeted both as community leaders capable of influencing the population and as a source of income. Many teachers who refused to provide money or otherwise comply with the demands of the Maoists were mutilated or killed. United Nations Educational, Scientific and Cultural Organisation (UNESCO 2010) reported the Maoists abducted 21, 998 students and 10, 621 teachers between 2002 and 2006.

Likewise, the Nepali government sought support from teachers, and teachers suspected of supporting the Maoists were arrested, tortured, and killed by state forces (Ibid). Schools were used as army barracks (OHCHR Nepal Conflict Report 2012) and targeted by state forces if Maoist gatherings were conducted in or around school buildings (Amnesty 2005; ACHR 2005). Children suspected of supporting the Maoists were arrested, raped, tortured, and killed by state forces (OHCHR Nepal Conflict Report 2012). As a result, children feared attending school due to the threat of arrest, abduction, torture, killing, and enforced disappearance by both sides to the conflict. Additionally, many people who were killed or declared missing had children, some of which witnessed the abduction or arrest of their parent.

As described in the previous chapter, the majority of Nepalis killed or declared missing during the conflict were men, and most were the sole breadwinner in their family. The loss of a male head of household during the conflict had severe economic consequences for their parents, wives, and children. Such children were often forced to discontinue their education, seek additional employment, take on additional childcare and household chores, and faced stigmatization in their communities where fathers were viewed as protectors of safety and dignity. Nepal's peace agreement explicitly calls for an end to capturing educational institutions as well as the cessation of holding students and children captive and causing them to disappear (2006).

Scholarships for “Children Affected by Armed Conflict”

With \$23 million of a \$50 million grant from the World Bank, the Government of Nepal implemented an Interim Relief Program in 2008 and included a scholarship provision for “children affected by armed conflict” (Carreza 2012). Yet, the state constructed victimhood so that not all Nepalis who experienced gross violations of human rights as children were included in the program. The scholarship policy included children who experienced a disability as a result of the armed conflict and children whose parents were killed, disappeared, or experienced a disability as a result of the conflict. Nepal's Interim Relief Program is not considered reparations according to international standards due to the state's failure to acknowledge responsibility. Rather, the interim relief policy was framed as humanitarian aid or economic assistance intended to provide temporary relief until truth commissions were established and a reparations program was implemented. Scholars have argued for the potential of victim reparations to aid in social and political inclusion (De Greiff 2006; García-Godos 2013) and serve as symbolic acknowledgements of structural violence (LaPlante and Theidon 2007). However, I argue the only semblance of financial reparations implemented since the signing of the peace agreement (i.e. the Interim Relief Program) has served to safeguard the continued exclusion of the most marginalized people who experienced gross violations of human rights as children.

In countries undergoing processes of transitional justice, scholars have drawn attention to the politics of victimhood (Bernath 2016; Druliolle 2015; McEvoy and McConnachie 2012; Sajjad 2016; Wilson 2001) and illuminated how “notions of victimhood are produced, contested, negotiated, adapted and neglected in the context of processes of power-driven social interaction that depend on specific social, economic and political conditions” (Waardt 2016:18).

Determinations of victimhood may be based on perceptions of innocence (McEvoy and McConnachie 2012), ongoing political divisions (Druliolle 2015), or a hierarchy of violations in need of redress (Scheper-Hughes and Bourgois 2004:1-2). The determination of victimhood is the starting point of processes of transitional justice aimed to redress human rights violations and is crucial for the implementation of judicial and non-judicial mechanisms. In Nepal, elite actors have determined which violations are worthy of redress through the Interim Relief Program, thus conferring victim status to some while systemically excluding many people who experienced gross violations of human rights as children. For example, children who were arbitrarily arrested, abducted, conscripted as soldiers, tortured, or experienced sexual violence were not qualified as victims in the Interim Relief Program.

Within a context where powerful Nepali leaders are diligently working to escape prosecution, the exclusion of some victims from the Interim Relief Program is unsurprising. The international money provided for the Interim Relief Program was distributed through the national government to district level government education offices. Because transitional justice processes have failed to include structural changes, the process of distribution prevented access to people from marginalized communities.

Barriers to Access and Inequitable Access

For many conflict victims who qualified for interim relief, the process of receiving a scholarship was extremely difficult. According to the government official responsible for distributing the scholarships in Bardiya, families wishing to receive the scholarship must first go to their local village development committee secretary and request a certified recommendation letter. From there, they take the letter to the local peace committee where an additional recommendation is required. Then, victims must travel to the district headquarters in Gulariya where they take the recommendation to the Chief District Officer who then issues a card identifying the person as a victim. Further, the birth registration and validation of the relationship to the victim must be provided along with a recommendation from the current school the student hopes to attend. If the conflict victim is able to complete the process, the school then sends the recommendation to the District Education Office (DEO). The DEO sends the recommendation to the Ministry of Education in Kathmandu, which decides if the child will receive a scholarship. If the child is determined to qualify for the scholarship, the Ministry of Education sends the money to the DEO, which distributes the money to the student's school, family, or the student.

While this process is similar in Nepal's capital, the government offices responsible for the distribution of scholarships are more accessible in Kathmandu via public transportation. Further, many victims in rural Bardiya do not have legal documentation due to the ongoing lack of accessibility to government offices. The majority of conflict victims living in Bardiya were facing marginalization and difficulty in accessing healthcare, education, and food prior to the outbreak of armed conflict. Nepal's conflict served to entrench existing inequality and prevent access to basic needs. Further, government officials in Bardiya are appointed by the national government in Kathmandu. At every level of bureaucracy, conflict victims from the Tharu community are faced with male, "high" caste government officials with greater access to political connections and financial resources. The requests for documentation by the state reinforce marginalized victims' exclusion from state processes that mark belonging through paperwork and citizenship cards. Members of the Tharu community have never had equal access to these bureaucratic spaces and mechanisms. Yet, when victims from the Tharu community struggle to complete the process required to obtain scholarship money for their children, government officials, such as Balkrishna, cite victims' ignorance, rather than the institutional structures, as the most significant barrier.

Kathmandu, the capital of Nepal, houses the national government offices responsible for the distribution of the Interim Relief Program. According to the government official responsible for the distribution of scholarships in Kathmandu, most children receiving scholarships through the Interim Relief Program are attending private school. This is in contrast to children in Bardiya receiving the scholarship who are primarily attending public school, according to government officials in Bardiya. According to the DEO in Kathmandu, there are more than 1000 private schools and about 300 public schools in the district. Even with the scholarship provided through the Interim Relief Program, most conflict victims in Bardiya cannot access private school either financially or geographically. Rather than offering opportunities for upward mobility through education, the scholarships implemented through the Interim Relief Program have done little more than distract from demands for greater economic and social equality, political inclusion, and an end to poverty and serve the interests of people with greater access to power and resources.

Further, to gain access to knowledge about the Interim Relief Program to initiate the process, conflict victims needed to be connected to a conflict victims' organization, a political

party, an international non-governmental organization, or a non-governmental organization. Children were defined in the Interim Relief Program as younger than 18 years of age, and some victims were unable to receive the scholarship money because they had passed the age of 18 before they were informed about the program or before their families could complete the necessary steps. In the case of scholarships in Nepal, the provision to cap the age of recipients at age 18 has been a source of contention and has excluded many victims who have since aged out of their qualifying status. Because the scholarship program was not started until 2008, many people who were affected by conflict as children did not qualify. Others who qualified as “conflict-affected” and met the age requirements at the time the scholarship program was launched were unaware scholarships were available. They were thus disqualified from the opportunity. Many interviewees lamented that the age cap prevented them from the possibility of higher education. Despite several Nepalis’ childhood experiences of gross violations of human rights and the subsequent loss of educational opportunities, powerful government officials designed the scholarship program to the exclusion of many, particularly the most marginalized, victims.

Regarding the scholarship program in Nepal, one female interviewee whose father was disappeared during the armed conflict in Bardiya stated,

This scholarship for conflict-affected children is good but the way the age limit has been prescribed, to provide up to plus two [class 11 and 12], is not satisfactory to me at all. When it was declared that scholarships would be given, a lot of time had already passed, and I did not get it. So, the conflict victim children should read only up to plus two and under the age of 18? Then, above that, we should not read? The age limitation should not have been there. The government should educate them as high as they want to study.

Several interviewees who experienced a gross violation of human rights when they were younger than 18 years of age stated that they perceived their lack of knowledge of programs for conflict victims as due to their lack of political connections. They felt that people with access to political power were able to receive government benefits while they were systematically excluded. My interviews with conflict victims and government officials responsible for the distribution of scholarships in Kathmandu confirmed their suspicion. Additional scholarships were provided outside of the Interim Relief Program for children with greater political connections. For example, the national government choose children of martyrs for a greater scholarship allowance than allotted through the relief program, with no age limit, and if the

scholarship recipients stayed in school continuously, they could receive scholarship money all the way through their Ph.D. (personal interview with government official in district education office Kathmandu). Additionally, some children of the state security forces who died during the conflict were provided with free schooling at a school for children of the police and scholarships were made available during the armed conflict that provided aid through the master's degree level. A national government official in Kathmandu lamented how once the Maoists gained political power, they were able to fund Maoist schools for "children of martyrs" throughout Nepal. He contended the schools were breeding grounds for Maoist sympathizers, which caused me to think about how state schools train children to be adults who protect the state and promote homogeneous forms of nationalism. In the context of transitional justice, this is significant because transitional justice mechanisms are meant to redress human rights and humanitarian law violations. Nepalis who were tortured or raped by state security forces were excluded from scholarship provisions. Further, families of the disappeared (primarily by state security forces) and killed as civilians not taking part in combat were systemically excluded from the scholarship money by postponing the policies until 2008, providing a smaller amount of money, and placing an age limit of 18 years of age. Many interviewees from the Tharu community perceived their exclusion as a continuation of the government's commitments to nepotism and discrimination.

As discussed earlier in this chapter, members of the Tharu community in Nepal view their community's marginalization and poverty as intimately linked to their historical and ongoing lack of access to education (Guneratne 2002; personal interviews). Further, education is commonly viewed as means to resist hierarchical power arrangements socially, economically, and politically (Guneratne 2002; personal interviews). Thus, the inability of people from the Tharu community in Bardiya to access the scholarship program was viewed by many interviewees as a systemic means of continuing hierarchical power arrangements benefiting those with political connections due to their "high" caste status and access to resources (i.e. money and land). Many victims are also aware that during the conflict children of state security forces were awarded scholarships immediately following the death of their parents. The scholarship money for these children was awarded until the recipients reached the age of 21 and covered the costs of higher education through the bachelor's degree. In interviews with recipients of the scholarship program for children of the security forces in Kathmandu, the scholarship money, along with additional money awarded to their families as financial compensation, has

allowed some recipients to relocate to Kathmandu, attend private school, and complete their college degrees. Some of the recipients were pursuing their master's degrees and others had siblings who secured jobs in the United States. Although recipients had varying access to resources before and after the conflict and faced many hardships following the loss of their parents, they were granted greater opportunities to pursue their education through the scholarship program.

Processes of transitional justice aim to redress human rights and humanitarian law violations, and the death of a combatant during combat is not categorized as a violation of international law. Thus, recipients of the scholarship program for children of deceased security forces are not considered mechanisms of transitional justice in Nepal nor are those children included in the Interim Relief Program. Yet, Nepalis targeted for the Interim Relief Program due to their civilian status are aware of what they perceive as inequitable access to scholarships and financial compensation due to the loss of a parent during the armed conflict. Victims with greater access to resources, living in urban areas, and connected to political power through family members, a victims' organization, non-governmental organization or international non-governmental organization, were more likely to receive the financial compensation provided through the Interim Relief Program earlier, and their children were subsequently more likely to receive the available scholarship money. Victims perceived their exclusion from the scholarship program as a continuation of Nepal's long-standing systemic inequality.

It is unknown how many people were tortured or experienced sexual violence during the armed conflict, and these violations are understood to be vastly underreported (OHCHR Report 2012; personal interviews with staff from non-governmental organizations working with victims of torture and sexual violence). The Office of the High Commissioner for Human Rights Report (2012) cites state security forces as being responsible for the highest number of reported cases of sexual violence and torture. Females were more likely to experience sexual violence, especially in the absence of male family members (OHCHR Report 2012). Being "high" caste and having access to greater resources did not shield Nepalis from the experience of state violence during the armed conflict. Yet, interviews with staff from non-governmental organizations working with conflict victims perceived poor people from "low" caste and ethnic groups to have been more likely to have been tortured or experience sexual violence due to their inability to seek redress through government institutions dominated by men who were better resourced and "high" caste,

thus giving them access to political power. For government officials with connections to the Nepal Army during the armed conflict, discouraging attention to these violations ensured their continued impunity. Maoist leaders have also been implicated in the conscription of child soldiers, which has been an ongoing contentious issue due to the perceived threat of prosecution. While the UN facilitated a disarmament program, many former child soldiers never received access to the resources necessary to complete their education or complete vocational training that would ensure their livelihood.

Thus, the Interim Relief Program was designed to fail to provide redress for some of Nepal's most marginalized victims. In Bardiya, government security forces, including the army and police, arrested and tortured children suspected of being Maoists in order to obtain information about the ongoing insurgency (personal interviews). After meeting community leaders and conflict victims in Bardiya, they continued to introduce me to people who had been arrested by the Nepal Army and tortured when they were younger than 18 years of age. Many of my interviewees who were tortured as children were not associated with the Maoists. However, they were assumed to be Maoists by state forces due to their membership in the indigenous Tharu community. During the armed conflict, the Government of Nepal named the Maoist insurgents "terrorists," offered financial rewards for the capture of Maoist leaders, and instituted the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), curtailed fundamental rights, including the right not to be arbitrarily detained, and mobilized the Nepal Army unified with the Nepal Police and newly-created Armed Police Force against the Maoists. The Maoists publically claimed to be fighting on behalf of historically marginalized groups, including indigenous groups such as the Tharu, and some members of the Tharu community in Bardiya joined the Maoist insurgency as combatants. Yet, civilians from the Tharu community were disproportionately targeted regardless of their personal affiliation with the Maoists (OHCHR Bardiya Report 2008), and Tharu became synonymous with terrorist (personal conversations, interviews, and observation). For example, a male interviewee from the Tharu community named Antaram described how being arrested and tortured hindered his ability to excel in school:

Before I was arrested, my study was so good. I was first from class one to class five. After the Nepal Army and the Nepal Police arrested me, my studies suffered. I wanted to do better, but I had a kind of fear. All the time I would remember the inhuman behavior of the Nepal Army. Because when I was arrested and kept in the Army camp, they would

always torture me physically and mentally. They would demand information about the insurgency. [They said] ‘If you don’t tell us, we will kill you.’ In this way, I had mental torture. In this way, I wanted to do better in my studies, but I was unable.

As Nagengast (2003:122) argues, state violence creates punishable categories of people, legitimizes and de-legitimizes certain groups, and enforces behavioral norms. “Torture,” she contends, “has another, only partially successful function-to terrorize people into conformity” (Ibid). Those who are de-legitimized are often blamed for their own oppression or torture (Nagengast 2003). Practices of war against a magnified enemy, such as terrorism, and discourses of power prevent the illumination of differences in power and the internal violence of the state (Ibid). Other interviewees, primarily from the Tharu community, deemed “terrorists” during the armed conflict, also specifically described how their experiences of detention and torture inhibited their access to education and lamented their exclusion from the scholarship provision and access to medical treatment.

Sexual violence that occurred during Nepal’s armed conflict is argued to be vastly underreported due to the fear of stigmatization, retribution, and complete lack of options for redress (Human Rights Watch 2004; OHCHR Report 2012). I decided not to interview victims of sexual violence due to the possibility of increasing their stigmatization within their families and communities. While a small percentage of Nepali women are publically outspoken about their experiences of sexual violence during the armed conflict, others have been ostracized by their husbands and in-laws after reporting their experiences to non-governmental organizations and international non-governmental organizations leaving them without basic resources, such as food and shelter. I also chose not to ask questions about sexual violence during interviews with conflict victims, but some interviewees mentioned their knowledge of other people’s experiences. Without asking follow up questions, I listened to them speak about sexual violence that occurred during Nepal’s armed conflict. Prabal, a Tharu male interviewee who was living in a rural village in Bardiya whose father was disappeared by the Nepal Army during the armed conflict said,

During the conflict period, the Nepal Army was involved in the rape of different sisters in the village and even though they had no wish, they were involved in sexual violence. Generally the female sisters, they tell the truth to their close ones only. There is no mechanism to help them. When they try to talk about sexual violence, members of society will tease them...[and] think they can be treated badly. This is the reason why their dignity in society has been lowered...So, the girls which were subjected to rape and

sexual violence have not been able to say what they have been through, because they think it will be a shame for them in the society. The government should make necessary mechanisms [so they can receive financial relief and] the culprit brought under the boundary of the crime (the perpetrator should be prosecuted).

As stated by Prabal, the experience of sexual violence continued to be associated with the loss of dignity. Interviewees also mentioned the loss of dignity associated with their experiences of torture, conscription as child soldiers, and the killing and disappearance of their parents. Many interviewees felt as if the Government of Nepal, including the Maoist party, should publically acknowledge victims' dignity through various mechanisms. In conversations with people outside the Tharu community, conflict victims in Bardiya continue to be associated with Maoism and/or terrorism rather than being acknowledged as having experienced an undeserved violation of international law and personal dignity. For victims from the Tharu community, they are then doubly stigmatized. Formal acknowledgement of state responsibility as envisioned through formal reparations processes were thus important to victims who felt as if their dignity had been lost. Till now, all reported victims of sexual violence during the armed conflict are female. According to reports released by the UN, non-governmental organizations, and international non-governmental organizations, state security forces frequently subjected girls and women to sexual violence during the armed conflict; rape was common when searching for Maoists and to punish female Maoist cadres and sympathizers (Across the Lines; IHRICON 2007; OHCHR Report 2012). Women who lived close to army barracks or perceived Maoist strongholds were at a greater risk (Ibid). Children (i.e. girls younger than 18) were particularly vulnerable to sexual violence during the armed conflict. More than one third of reported victims of sexual violence during Nepal's armed conflict were younger than 18 and many of those were younger than 15 years old (OHCHR Report 2012; Transitional Justice Resource Archive Nepal).

Even if children were recognized as "conflict victims" through the Interim Relief Program and qualified for the scholarship program, scholarships were only available for up to three children per family. This left families in a position where they had to choose which of their children to send to school. Given the economic situation of many victims in Bardiya, parents were already faced with this choice. In this economic situation, girl children are often the ones excluded from education. As Dhriti, a female interviewee, stated, "since my economic condition is very pathetic, my mom has to decide to whom I should teach, to whom I should educate, to my daughter or to my son?" Despite many parents' desires to educate their daughters, males are

typically given priority if resources are limited. The limit on the number of children per family who could receive the scholarship prevented families facing an even greater lack of resources from the possibility of educating all their children and was especially exclusionary to girls. Girls in Nepal already face barriers to complete higher education, particularly girls from rural villages who are poor. When those conditions are compounded by the experience of the death or disappearance of their father, accessing education and resources were more difficult.

Rather than redressing the violations they endured or addressing the ongoing exclusion that children from marginalized groups face accessing education, the relief program entrenched their exclusion through the denial of scholarships to children who endured sexual violence or torture, lived in rural areas, were poor, were from “lower” caste and ethnic groups, and those without access to power or assistance to secure the scholarships in time.

Barriers to Continuing Education After Conflict

Students who were able to overcome the barriers to access were faced with difficulty in maintaining the scholarship. Many of my interviewees who received the scholarship were unable to maintain it due to the difficulties they faced as a result of the conflict. In addition to the age limit of 18, scholarship guidelines include a provision to discontinue the scholarship for lack of attendance or performance. Poor children who lost their parent during the conflict had additional household duties, including caring for their siblings, agricultural work, and were often required to work in wage labor. For some conflict-affected children whose families had greater access to resources, the scholarship allowed them to attend boarding school where they could focus on their studies. Yet, other interviewees’ economic situation required them to work so they could provide for their families. Poor children whose father was killed or disappeared, along with their mothers, also faced stigmatization within their villages, schools, and families. Their stigmatization made access to housing, food, and education more difficult.

Interviewees in Bardiya who lost the scholarship due to lack of attendance also cited personal illness as a reason why they could not attend school regularly. In many villages in Bardiya, access to medical treatment is limited. Those who did not meet the attendance requirements or failed a class lost the scholarship and were henceforth excluded from the program.

Further, the scholarships did not provide the full amount of money needed for poor children to attend public school. Although there are no public school tuition fees in Nepal,

families needed sufficient resources to lose the labor of their children and were also required to provide money for their school supplies. Without the income of a father, this was a very difficult task for some. Not only the scholarship program, but also many aspects of Nepal's education system serve to entrench inequality. Tuition classes (private tutoring) are required for most children to pass their classes. This creates an additional barrier to families without the financial means to provide such resources to their children. Of the very few poor children in Bardiya affected by conflict whose families had access to the resources to help them complete class 10, they were then faced with passing the School Leaving Certificate (SLC), also known as the "iron gate" in Nepal. As Mani, a male interviewee who was arrested and tortured by state security forces when he was approximately 13 years of age, explained,

The condition of our house was so that we didn't have enough food to eat. We didn't have enough money for medical care if we got sick. While I was studying, I had to go to work in the field two to four days per week. With the money I earned, I used to pay my school fees and buy my notebooks and pens. By doing that I studied up to class 10, but I could not pass the SLC. I could not complete my SLC because of the condition of the house...if there was money, I could read and my parents could educate me.

Students in Nepal who do not pass the SLC are not able to complete their studies beyond class 10. Families with resources can send their children to private school where they have a much greater chance of passing the SLC, learning English, going on complete classes 11 and 12, and then studying at the bachelor's level. According to the District Education Office in Bardiya, the current SLC pass rate for children attending public schools is 22% while children in private schools have an 85% pass rate. Additionally, families with greater access to resources can ensure that their children study subjects that will ensure their viability in the job market to secure higher paying jobs. For those who cannot secure employment within Nepal, higher education determines in which country they will work as well as their working conditions. Educated graduates who speak English are more likely to secure employment in safer jobs abroad. Nepalis who are less educated are more likely to work in unskilled or semiskilled labor positions often in dangerous working conditions in Qatar, India, the United Arab Emirates, Kuwait, and other countries. The scholarship program did not provide enough money for children to attend public school let alone private school making it very difficult for poor conflict affected families to educate their children. Interviewees expressed a desire for higher education, as it was perceived to be a means to access jobs that would provide sufficient resources for their families' survival.

The scholarship guidelines have prevented many who experienced gross violations of human rights during Nepal's armed conflict from receiving scholarships through the relief program and thus excluded them from the possibility of education.

Interviews with people who experienced gross violations of human rights as children in Bardiya revealed that one of the only semblances of a state-led mechanism of transitional justice had failed to provide them with a sense of justice. One female interviewee explained,

These days even when transportation vehicles kill chickens, then they get [financial] relief. There is justice. So, here is the case of murder [of my father]. Then we should not get anything? They get justice. We are not getting justice. The children of Army get justice when anything happens. If they die or commit suicide, arrangements are made for food, shelter, and clothes. For us, there is nothing.

In Bardiya, interviewees expressed dissatisfaction with mechanisms of transitional justice and their ongoing distrust in the Nepali government. Given that many of them experienced a gross violation of human rights at the hands of a member of the Nepal Police or Army, this is not surprising. Children whose parents were disappeared or killed during the armed conflict were given differential access to the scholarship provision and children who were raped, tortured, or conscripted as soldiers were excluded completely. In Bardiya, interviewees' perceptions of the national government and the scholarship program were overwhelmingly negative. The following quotes are all from male and female interviewees residing in Bardiya whose fathers had been forcibly disappeared by state security forces:

If we see in Bardiya, the conflict victim children are not much educated. This is because families do not have the resources to educate their children. The government has given this scholarship just so it appears that something has been given. If the government wanted to do something for the conflict victims, then it would not have prescribed the age [of 18].

Whoever goes to the government, before they go to the government, they say 'we will do something for you,' but after they reach to the government, they do not do anything. And now it's been 13 years and all the big political parties have reached the government but have not done anything till today. At one time we felt maybe the Maoist party will do something for us, but they have not done anything after they went to the government.

What to say about the national government? In Nepal, the leaders change time and again. They talk a lot but do nothing. They will help to their own relatives only. That much. They do not do anything. They do only corruption. More than corruption, they corrupt people, their thoughts, money, and many things.

The scholarship program in Nepal has failed to provide conflict victims with a sense of justice and redress. Further, it has served to entrench inequality and perpetuate distrust in the Nepali government. Every conflict victim I interviewed in Nepal, regardless of their access to education or region of residence, expressed distrust in the national government and commonly cited systemic exclusion, nepotism, and corruption as the sources of their distrust.

Conclusion

During Nepal's armed conflict, schools were commonly sites of violence and the Maoists specifically targeted private schools as a tactic to highlight how the privatization of education reinforced exclusion and inequality. Yet, ten years of armed conflict failed to ensure marginalized groups' equal access to educational opportunities. Although the state implemented scholarships for some "conflict affected children," the scholarship provision through the Interim Relief Program was designed and implemented to ensure the exclusion of poor rural victims from historically marginalized groups. In Nepal, access to formal education continues to be a marker of status and hierarchy. While systemic barriers to education remain, the inability of poor parents to educate their children, ironically, is associated by some government officials with their not knowing the value of education, as illustrated by Balkrishna's quote in the introduction to this chapter, and discourses of knowing/not knowing are utilized to obscure attention to power differentials. Meanwhile, poor parents often described to me their willingness to do everything possible, including taking out loans, to educate their children. Education continues to be understood as a means to overcome inequitable structures of power and obtain dignity. However, the barriers conflict victims in Bardiya experience trying to access scholarships demonstrate not only that structural inequality still exists during the "transitional" period, but also that the state is committed to maintaining it. As one interviewee stated, "To date, the government is of no use, but let's hope for better."

Chapter 6

The Performance of Inclusion and Exclusionary Truth

“The political parties picked us to be on the commission.” I was sitting across from Dhanvi, the only member from the Dalit community on Nepal’s truth commission. I was perplexed that she said this to me. I hadn’t yet asked her a question. I had only just introduced myself as a Ph.D. student conducting research and sat down in her office after being asked by Akash, another member of the commission I had scheduled to interview, to wait there.

Although it was well known that the members of both truth commissions were politically appointed (and it was publicized in newspapers and openly criticized by the UN, victim-activists, staff from non-governmental organizations, donors, and diplomats), it was also a taboo and contested subject among the members of the commissions and the Nepal government. The commissions were meant to be neutral fact-finding bodies that would, among other tasks, “investigate incidents of gross violations of human rights, find out and record the truth and [publicize] it” (www.trc.gov.np/about-us).

Akash entered the room and sat down to my right in a black leather chair, identical to the one I sat in, while Dhanvi stayed seated in her office chair behind her desk to my left as she was reading the newspaper. My interview with Akash then focused on the complaint-taking process. Both the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) were in the process of accepting “complaints” related to the armed conflict. During the interview, Akash asked to take a short break and left me in the room with Dhanvi who again began offering information. Speaking about the Dalit community in Nepal, she said, “They are uneducated and backward. They don’t have jobs.” When explaining how she became educated, she said, “I worked hard.” Although I completed my interview with Akash, it was Dhanvi’s brief comments that day that left me thinking about the performance of inclusion in Nepal.

Dhanvi’s seat on the commission was presented as a symbol of inclusion and representation of the Dalit community. However, despite the inclusion of a member of the Dalit community on the commission, Dhanvi stated clearly that she holds her seat because she was appointed by a political party to represent their interests throughout the state-led truth-seeking processes. In her comments, she also held up the myth of meritocracy-working hard as a means for achieving upward mobility-without mentioning how systems of inequality and nepotism

prevent people from gaining access to jobs, particularly in government-appointed positions, and in lucrative positions at the UN, international non-governmental organizations, and non-governmental organizations. It seemed to me that Dhanvi had failed to differentiate between kinds of “hard work” that are politically and economically rewarded and those that manifest as systems of slavery (e.g. *kamaiya*⁸ labor). Her presence on the commission also struck me as more like a performance (than a representation) of inclusion.

I soon began to notice that these patterns-or performances, as I call them-of inclusion extended to other groups as well. Boldly, while sitting next to two male commission members, a female commission member named Maya said,

Women are not a priority. They are a priority in name only. The policies call for the inclusion of women, children, and the elderly. There is no such special provision to take complaints from women...I am a woman on the commission and most of the other members are male. I do not have an equal voice on the commission.

The state policy that established the truth commissions stipulates that at least one woman serve on each commission. Once established, there were two female members on the TRC and one female member on the CIEDP.

My conversations with Dhanvi and Maya illustrate how inclusion is both performed and politicized in state-led truth commissions implemented as mechanisms of transitional justice in Nepal. Likewise, the inclusion of children in “complaint-taking” processes is stipulated in the policies that established the commissions and mandated their work. In this chapter, based on observations of Nepal’s truth-seeking processes as well as interviews and conversations with victims and facilitators, I examine how the state performs inclusion and question what political work is done through this façade. I argue the performance of the inclusion of “children” and historically excluded groups in truth-seeking processes serve to maintain exclusionary power structures.

⁸ Within the *kamaiya* labor system, landlords tie entire families to systems of debt bondage from which they can rarely escape. *Kamaiya* laborers are agriculturalists from the Tharu community and are typically not allotted sufficient means to sustain their livelihood, consistently placing them and their family members in greater debt. Although outlawed, many families continue to be systemically prevented from escaping the consequences of generations of exploitive labor practices and still consider themselves *kamaiya* as they are working for exploitative landlords despite legal protections. Tharu resistance to their exploitation by landlords has continually been curtailed by state violence. Also see Chapter 3 in this dissertation.

Truth-Seeking Commissions

Truth-seeking commissions, typically formed after an armed conflict, are temporary bodies created to establish a truthful historical record, formally acknowledge past human rights violations, promote reconciliation, identify perpetrators and the whereabouts of the disappeared, recommend reparations and reforms, and address the needs of victims. Between 1983 and 2010, more than 40 truth commissions were established globally (Hayner 2011). Early scholarly debates on transitional justice often centered on the utility of trials as opposed to truth-seeking mechanisms as a means to establish justice. Within this debate, truth-seeking commissions are understood to be more attentive to victims' needs than punitive measures by focusing on their stories, making the public aware of their suffering, and recommending reparations (Hayner 2011; Minnow 1998). Further, truth commissions are argued to strengthen democratic processes and rebuild trust between citizens and the state (see e.g. Freeman and Hayner 2003).

Nepal's peace agreement stipulated that a "High-level Truth and Reconciliation Commission" be established to "probe into those involved in serious violation[s] of human rights and crime[s] against humanity [during] the armed conflict for creating an atmosphere for reconciliation in the society" and stipulated that the names and addresses of the people who were disappeared or killed during the conflict be made public within 60 days (CPA 2006). More than eight years after the signing of the peace agreement, a Truth and Reconciliation Commission and a Commission of Investigation on Enforced Disappeared Persons, were finally established in February 2015.

Anthropologists examining transitional justice have illuminated the importance of understanding "local justice," or the ways in which justice is produced, experienced, and perceived in specific localities (Burnet 2008; Clark 2009; Drexler 2006; Hinton 2011; Robben 2011; Sanford 2003; Shaw 2007, 2011; Theidon 2007; Wagner 2008; Wilson 2001). Scholars have given particular attention how transitional justice mechanisms, including truth-seeking commissions, are implemented in ways that are considered "top-down" or exclusionary towards victims' needs (Laplante and Theidon 2007; Lundy and McGovern 2008; McEvoy and McGregor 2008; Shaw 2007). Dragovic-Soso (2016) argues a principal reason for the failure of the truth commission in Bosnia was the lack of legitimacy among victims' associations who perceived the commission as elitist and exclusionary. Likewise, Robins (2011, 2012) argues that transitional justice in Nepal has been an elite-driven process that has ignored victims' needs. As

a result of these findings, scholars and activists have called for a more victim-centric transitional justice in Nepal where victims are engaged in the process rather than dependent on national and international agencies to speak on their behalf (Robins and Bhandari 2012).

Other researchers, however, identify the benefits of truth-seeking processes. Sanford (2003), in her research on Guatemala, argues that truth-seeking aids in healing and provides the foundation for rebuilding democracy, justice, and trust. Burnet (2008) contends knowing the details of their loved ones' deaths during the genocide in Rwanda was not only a political necessity but a spiritual need for survivors. Yet, she also draws attention to how the *gacaca* court system, implemented to end impunity, promote reconciliation, and reveal the truth, has led to the repatriation of remains for some families while other victims have been excluded from knowledge of their loved ones' fate and whereabouts (Ibid).

Overall, however, given national and international political influences on processes of transitional justice, scholars have challenged the utility of truth commissions to achieve their desired outcomes of helping victims to heal, promoting accountability and reconciliation, and establishing an authoritative record (Daly 2008; Mendeloff 2004; Sundar 2004) and called for greater attention to how truth-seeking commissions can be politicized and polarizing (e.g. Issacs 2010). Further, they have questioned what kinds of knowledge can be produced through truth commissions (Coxshall 2005) and challenged assumptions that truth that can be independent from state power (Thomson 2000). Others have argued the political conditions in which truth-seeking commissions operate (Quinn 2004), the choice of members of the commissions, and how they discover and present their findings can determine what kind of knowledge is produced (Chapman and Ball 2001). Wilson (2001), in his examination of the truth and reconciliation commission in South Africa, argues that victims' needs were secondary to rebuilding the post-apartheid state and political elites inserted notions of justice that were not satisfactory for many victims. Millar (2010) contends the educated elite minority had divergent experiences and perspectives of the TRC in Sierra Leone compared to the non-elite majority. He argues that members of the elite, with greater access to resources and power, were more likely to be in a position to take advantage of the large amount of funding for peacebuilding after the war and feel as if the TRC helped them while non-elite interviewees expressed negative attitudes about their experiences of the TRC (Ibid).

Children's Inclusion in Truth-Seeking

While children are argued to be uniquely vulnerable during armed conflict (Aptel 2012; Ni Aolain 2007; Machel 1996; Ramirez-Barat 2012; UN 1325; UN Approach to Transitional Justice), truth-seeking commissions have not consistently focused on children's experiences or their inclusion. However, as international attention surrounding child soldiers increased, such as in Sierra Leone, so did the performance of their inclusion in truth-seeking processes. Although the truth commission in Sierra Leone (2004) was the first to explicitly mention children in its mandate, involve children in statement taking, and publish a child-friendly version of its final report, violations against children were documented by earlier truth-seeking commissions in Chile (1991), El Salvador (1993), South Africa (2002), Haiti (1996), and Guatemala (1999). Perhaps following the lead of Sierra Leone, the final reports of the truth commissions in Peru (2003), Liberia (2009), and Timor Leste (2005) included chapters focused on children, and the truth commissions in South Africa, Liberia, and Timor-Leste facilitated public hearings for children. The Liberian TRC included children throughout the process by training statement-takers to work with children, hosting TRC awareness-raising workshops for children, holding children's hearings and panels, and exhibiting children's art and writings about their experiences of war (Sowa 2010). However, definitions of "children" are not applied consistently in the inclusion of children in truth-seeking commissions. For example, the commission in Liberia decided "children" only included people who were 18 or younger during the work of the TRC (Sowa 2010) while the South African TRC refused to accept statements or testimonies from people younger than 18 (Pigou 2010).

Scholars examining children's inclusion and participation in truth-seeking commissions have argued for greater attention to structures of power and inequality (Pigou 2010) and highlighted children's emphases on educational opportunities, sustainable livelihood, safe drinking water, and the construction of hospitals (Sowa 2010). Cook and Heykoop (2010), based on their research in Sierra Leone, contend children are more likely to report positive experiences with commissions if they are provided economic, social, and emotional support. Without such support, children's statement-taking experiences can increase their vulnerability and children may feel as if their statement-giving experiences were alienating and useless (Ibid). They argue that children's basic economic, education, and protection needs should be linked to truth-telling processes and advocate for poverty reduction and children's long-term emotional,

developmental, and material support (Ibid: 190). Cook and Heykoop's (2010) findings suggest that children's inclusion in truth-seeking often serves as a performance to conceal global and national systems of inequality. This is particularly illuminated when children, as in Sierra Leone, request access to safe drinking water, health, education, and sustainable livelihoods and the truth commission produces a child-friendly version of its report to symbolize their inclusion rather than addressing their stated priorities.

Likewise, in Nepal, the inclusion of children's voices regarding truth-seeking processes was symbolized even before the establishment of the commissions, but their opinions were disregarded. For example, in 2008, when Nepali children (people younger than 18 years of age at the time) were invited to participate in a workshop on children and transitional justice, they expressed their opposition to a truth commission established and supported by national political actors (Siegrist 2010). Children explicitly stated they didn't want the "truth" utilized for political purposes (Ibid). Their input was ignored, and seven years later two state-led truth-seeking commissions were established in Nepal.

Policies "for Truth"

Many victims who were younger than 18 during the armed conflict had aged out of the internationally defined category of "childhood" during Nepal's transitional period. Thus, I was struck by the inclusion of special provisions for "children" in both the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 (TRC Act), which established the commissions, and the Truth and Reconciliation Commission Rules, 2016 (TRC Rules), which stipulated the truth commission's activities. A definition of "children" was not included in either document and no clarification was provided to explain why victims' categorization as children might require special provisions. Consistent with most transitional justice policies focusing on children, neither the TRC Act nor the TRC Rules included acknowledgement of the systemic discrimination or inequality experienced by children from historically marginalized groups. Also noticeably absent was any explanation of how their positionality contributed to their vulnerability during the armed conflict. Regarding special provisions for children, the TRC Act (2014:15) states,

The Commission may make a separate arrangement as prescribed for facilitation of children, senior citizens, person[s] with disabilit[ies] and person[s] subjected to sexual violence in the act of filing a complaint with the Commission...[and] in the act of making a statement or testimony.

Throughout the TRC Rules, “children” are assumed to especially need psychological support and are conflated with senior citizens, people with disabilities, and people who experienced sexual violence. Yet, their need for special provisions and preference *as children* is not explained. In the TRC Codes of Conduct, discrimination is prohibited at an individual level. Yet, the written policies of Nepal’s truth-seeking commissions do not indicate if or how victims of the armed conflict might experience processes of transitional justice differently due to systemic discrimination and inequality. Likewise, “children” are written in both the TRC Act and Rules as static, universal, and homogenous. In semi-structured interviews with members of the commissions involved in the complaint-taking process, the definitions of “children” they used were inconsistent, and they did not consistently clarify the reasons why children needed special protection or priority. Some members of the commissions argued that “children,” as defined in the TRC Act and Rules, referred to victims who were younger than a certain age during the conflict while others argued “children” meant victims who were younger than a certain age at the time they filed a complaint. Although members of both commissions were aware that a child is defined as younger than 18 according to international law, they sometimes also referred to children as younger than 16, as codified in Nepal’s domestic law.

During my last visit to the CIEDP for updates, a commission member named Satindra described to me how the commission would prioritize “children” who were disappeared during the armed conflict. When I first arrived, he said they had received 112 applications about people who were disappeared when they were children, defined as below the age of 16. Satindra stated, “we will give priority to children, senior citizens, and women and then to ordinary people.” Here, he explained senior citizens were defined as more than 50 years old. Satindra thus qualified men between the ages of 17 and 50 as “ordinary” while children, senior citizens, and women were presented as outside the category of “ordinary people.” The specific definitions and prioritization of these groups is particularly odd considering that it was men who were overwhelmingly disappeared during the armed conflict (more than 90%) leaving living family members that have unique needs due to their age and gender.

Further, these particular prioritizations divert attention away from why people from certain groups were forcibly disappeared during the armed conflict. In Bardiya, for example, every woman and child who was disappeared was from the Tharu community. Later, during the same conversation, he said, “women, children, and elderly people are in priority. Hearings can be

confidential for these groups. For women, people from the same gender can be involved.” I asked, “what does ‘children’ mean?” He said, “per Nepali law, under 18.” (Nepali domestic law lists children as younger than 16 years of age). I asked, “now or during the conflict?” “It can be both,” he replied. “What does senior citizens mean?” I inquired. “For me,” he said, “60 plus.” When I arrived, Satindra had defined children as younger than 16 and later as younger than 18. This was one of many interviews with members of both commissions where they defined children (and, in this interview, also senior citizens) differently even in the same conversation.

Shore and Wright argue anthropologists can read policies in a number of ways, including “as narratives that serve to justify or condemn the present, or as rhetorical devices and discursive formations that function to empower some people and silence others” (1997:7). Thus, despite the outward signs of inclusion and prioritization of certain vulnerable groups, the policies regarding state-led truth commissions, and the lack of consistent and clear criteria by which to define those groups, actually reflects the political and economic exclusion of the majority of Nepal’s population and silences poor, rural, conflict victims from marginalized communities. The TRC policies also conceal the political work of the state-led truth commissions in Nepal, which national leaders have controlled to obscure their complicity in gross violations of human rights that occurred during the armed conflict.

The Politicization of the Commissions and the Inclusion of “Children”

The amount of time that passed between the signing of the peace agreement in 2006 and the establishment of the commissions, the political appointments of members of both commissions, and the amnesty provisions for accused perpetrators were all ongoing sources of contention during the transitional period. Since the cessation of armed conflict in Nepal, prominent human rights/transitional justice organizations, diplomats, donors, and the UN have prioritized prosecutions as a necessary mechanism of transitional justice (Robins 2011, 2012, 2013; Sajjad 2013). Yet, many accused perpetrators of conflict-era rights violations have secured positions in the highest levels of the Nepali government. Thus, as is the case in many countries (e.g. Drexler 2010; Finnstrom 2010; Robben 2013; Ross 2010; Waldorf 2010; Wilson 2001), powerful national leaders in the Nepali government have insisted on amnesty as a means to maintain peace in response to human rights organizations’ and the UN’s insistence on prosecutions for war crimes. This debate, along with ongoing political instability, contributed to the postponement of the truth commissions and inevitably led to political work to conceal, rather

than reveal, victims' experiences. In interviews with members of both commissions, they stated that they had drafted the rules and codes of conduct and subsequently powerful government officials amended the commissions' policies to ensure their own protection from prosecution.

Further, the inclusion of "children" in Nepal's truth-seeking commissions was politicized due to the issue of child soldiers. Following the armed conflict, the United Nations Mission in Nepal (UNMIN) facilitated a reintegration program of former Maoist combatants into the Nepal Army. Of those registered through UNMIN, 4,009 were disqualified from reintegration due to their status as minors (defined as younger than 18 years of age) or late recruits (2,974 minors and 1,035 late recruits) (Robins, et al. 2016). Stigmatized as "disqualified," they were given 22,000 rupees (approximately \$285) and prevented from joining the Nepal Army. For ex-combatants who were not disqualified, they were given the option of being integrated into the Nepal Army or receiving cash payments depending on their rank. Approximately 3,200 chose to be integrated into the Nepal Army and 16,000 received a cash payment between 500,000 rupees and 900,000 rupees (approximately \$6,200-\$9,300) (Ibid). Thus, their age-the determinant of their having endured a gross violation of human rights and what makes their recruitment a war crime-has prevented them from receiving equal financial compensation in the reintegration program. Although some received counseling and/or vocational training, many former child soldiers are dissatisfied with their treatment during Nepal's transitional period (Robins, et al. 2016). Due to their frustration with former child soldiers' exclusion from integration and the 2008 Interim Relief Program (discussed in Chapter 5 of this dissertation), victim-activists have advocated for their inclusion in truth-seeking processes. Yet, during the complaint-taking period, members of the TRC publically disagreed on whether child soldiers should be included.

Just after the 90-day deadline to file complaints had passed in July 2016, I met with a TRC commission member, Ankit, in his office. I arrived a few minutes after 10:00 a.m. when the office opened. As I walked in, he was sitting behind his desk, and while I sat down across from him, he asked a young man to bring the newspaper and black tea. This was our second time meeting in his office, and one of the first things he said to me was, "I feel alienated from the other members of the commission." I asked him to explain the challenges he was facing. He responded by saying:

I have tried to bring up issues related to child soldiers, but the chair of the commission refused to address these issues or add them to the meeting agenda. [Two other members

of the commission] strongly requested that those issues not be brought up in our meeting. The issues I'm raising are challenging but important.

These debates among members of the commission were made public on social media and through national newspapers where commission members expressed their opinions on the inclusion of former child soldiers in truth seeking processes. Thus, within these debates, “children” referred to people who were now older than 18 years of age but had joined the Maoists as combatants when they were younger than 15 years of age. Politicians and victim-activists in Nepal were well aware of the prosecutions of leaders in other countries due to their utilization of child soldiers during armed conflict. So, debates around the inclusion of children, like most of the debates surrounding transitional justice in Nepal, became consumed by powerful political leaders’ escape from prosecution for war crimes rather than focused on the inclusion of victims in processes that would provide them with other forms of redress, such as greater access to sustainable livelihoods. The TRC officially announced in August 2016 that the use of child soldiers during the armed conflict would be put on hold without further consideration. The official reasoning behind this decision was that the use of child soldiers was viewed as a rights violation within the Maoist party, and should thus be handled within the party. In November 2016, the Supreme Court ordered Nepal’s truth-seeking commissions to investigate all filed complaints.

What Children?

Although children were explicitly included in both the TRC Act and Rules, staff members at the LPC office in Bardiya reported that no children filed complaints with their office. Likewise, staff at the Women and Children’s Office in Bardiya reported they had not received any complaints from children. At the TRC and CIEDP offices in Kathmandu, members of the commissions reported they were unaware of any children filing complaints. However, some members also stated they had not yet compiled data on the age of people who had filed complaints. One prominent member of a local victims’ organization in Bardiya said he assisted two children (both younger than 18 years of age) who were orphans to file complaints regarding the disappearance of their fathers. In practice, neither special accommodations nor priority were given to victims who were, according to international law or Nepali domestic law, children during the armed conflict or during the complaint-taking period.

Coming back to the interview with TRC commission member Ankit: after the initial complaint taking process had ended, I asked him about the inclusion of children. He said, “there was no one available to take complaints from women and children...and no extensive training was provided to deal with children and women or even emotional men.” Here women, children, and emotional men are conflated and the reason for special training on how to deal with children is framed as necessary because they would be more “emotional.” Throughout my time in Nepal, commission members never came to a consensus on what was meant by the word “children” in the policies mandating their work.

Children who were Tortured during Nepal’s Armed Conflict and Continued Exclusion

Although the members of Nepal’s truth commissions had divergent and inconsistent definitions of “children,” children are defined in international law, the basis of transitional justice processes, as younger than 18 years of age. State security forces did not distinguish people as “children” nor exclude them from torture when they were seeking information about Maoists during the armed conflict. Torture is listed in TRC policies as a gross violation of human rights, and therefore, incidents of torture were to be included in the “complaint-taking” process by the TRC. Further, the TRC Rules stipulate that victims of torture be included in the commission members’ recommendations for “compensation, facilities or concessions for victims.” Yet, victims’ experiences of access to state-led mechanisms of transitional justice were divergent depending on their positionality. Victims’ differential experiences mimicked historical patterns of the exclusion of certain caste and ethnic groups and poor Nepalis living in rural areas. In this section, I examine the experiences and perceptions of two males who were tortured by Nepal’s state security forces when they were younger than 18 and focus on their divergent experiences of access to Nepal’s truth-seeking commissions.

Priya introduced me to Kumar. Kumar, a member of the Tharu community, works as a *kamaiya*⁹ laborer and lives in a rural village in Bardiya with his family. Priya, a young Tharu female living in the same village whose father was killed during the armed conflict, suggested I speak with Kumar and invited him to meet me at her home. We sat down in a back room where Priya’s mother was preparing tea. After offering us all tea, she and Priya left the room. As I sat across from Kumar, who was arrested by state security forces when he was 17 years old, he explained that for him

⁹ See footnote 5 on page 72.

life is about learning how to be and living as *kamaiya*. Since my childhood, I have been working in other's field, and, even today, it has been continuing. From the date I started knowing things, I am *kamaiya*. We hoped our lives would change if we could buy some land, but we cannot. We even don't have land to build a house. While working as *kamaiya*, [the armed conflict started], and then the army took me from my home. When I was taken, my elder brother's wife was beaten. After I was taken, they locked me up. I was detained for nine months. I was beaten for four hours in the morning and four hours in the evening. I was beaten, and my life passed for nine months. They beat me and asked whether I was involved in the Maoists or not. I was beaten from my backbone to my legs. Except my head, they beat me everywhere. We were forced to stay in a dark room, the same room where we urinated and excreted. We never knew when it was day and when it was night. I was beaten every evening and also beaten while eating my food. This is how nine months passed. When ICRC [International Committee of the Red Cross] used to visit there, we were all hidden. We could not go out. They [army and police were used synonymously throughout the interview to refer to who arrested, detained, and tortured Kumar] dug a big hole in the jungle, and we were kept there with our hands tied day and night. My nine months passed that way, and when I was taken back home, [the Army] said [to my family] that I was only taken for questioning and sent back to home. When I arrived home, my family said they had already conducted a funeral ceremony for me thinking I had been killed. I was severely beaten. I had pain in my backbone. I could not walk. And what else to say? Now, still I have pain in my backbone that sometimes increases severely. When my brother searched for me, he was also beaten.

While Kumar may have sympathized with or even supported the Maoists, particularly given their stated opposition to exploitative labor practices, his positionality alone as a young *kamaiya* laborer from the Tharu community in a rural village in Bardiya increased his risk of arrest and torture by the Nepal Army. I met many members of the Tharu community who spoke of their torture as children by state forces during Nepal's armed conflict.

Although the state specifically targeted Nepalis based on their membership in a particular caste or ethnic group, if someone was suspected of being a Maoist, their "high" caste status alone did not shield them from state violence. I met Anil through a prominent activist for victims' rights in Nepal who was detained and tortured alongside him during the armed conflict. Members of the Nepal Army arrested Anil, a "high" caste male, when he was 16 years old, and he was subsequently detained at an army barracks in Kathmandu. As I sat across from him, Anil described how he was playing with his friends when a van pulled up, men jumped out, grabbed and blindfolded him, and drove away. At 16 years of age, when he was taken, he said that he had no connection to the Maoist party nor was he aware of their ideologies. Anil believed he was arrested because his brother's friend, who was also arrested, said Anil's name while being tortured by the Nepal Army. Despite Anil's lack of any connection to the Maoists, he was

abducted, tortured, and detained for 18 months in the barracks. He described to me how, for 18 months, he was constantly blindfolded and his hands were tied. He held his hands together in front of his body while saying “in the morning” and then held his hands behind his back saying “at night.” He and other prisoners at the barracks were not allowed to use a toilet leaving them no choice but to sit in their own excrement.

Among Anil’s most debilitating physical consequence as a result of his torture is kidney damage. He said a physician told him the kidney damage was likely due to his attempts to not urinate for 18 months. Anil described to me how he was questioned while he was hit “everywhere” repeatedly “by two or three people” with a plastic pipe and how his head was immersed in water. Then he offered me his hand to show me the scar from being shocked by an “electric stick” and explained how he was forced to sign a piece of paper formally admitting to being a terrorist. Anil also described being hidden by the Nepal Army during International Committee of the Red Cross (ICRC) inspections of the barracks but did not say he was forced into a hole in the ground with other detainees like Kumar described. As Nepal’s peace agreement was being signed, Anil said, a representative from Office of the High Commissioner for Human Rights (OHCHR) assisted in his release and rehabilitation.

Anil reported his experiences to both the OHCHR and the National Human Rights Commission, and subsequently received 25,000 rupees (approximately \$250) from the Government of Nepal. A representative of OHCHR also assisted in his arranging a temporary place to stay and medical treatment. Since Kumar’s release, he has not reported his experiences of torture to or received financial compensation or medical treatment from any UN organization, non-governmental organization, or the Government of Nepal.

Torture victims were excluded from Nepal’s Interim Relief Program, regardless of their age at the time of the human rights violation. Anil was fortunate that some medical care and minimal compensation were provided for him. Further, Kumar’s family’s lack of access to resources has prevented his pursuit of medical treatment and forced his immediate reentry upon his release into an exploitative labor relationship with a landlord. Despite his physical pain since being tortured, Kumar continues to work as an agricultural laborer. Although his labor provides sufficient resources to sustain his family’s lives, they continue to be indebted to a landlord and all lack access to medical care and basic education. He expressed fear that his children would remain *kamaiya* laborers. It’s difficult for most Nepalis to find work, and Anil laments his

inability to provide for his family. He believes the consequences of his detention, specifically his disabilities and lack of education, make finding work more difficult. However, Anil described being fortunate that his natal family and his wife work to provide sufficient resources enabling him to live a somewhat more comfortable life than Kumar. Anil's access to the knowledge of the OHCHR and the National Human Rights Commission allowed him to seek medical care and an extremely modest amount of compensation.

Access to knowledge and resources in Nepal is linked to privilege and power. Those with privilege and power are better able to access knowledge and vice versa. Knowledge of how to negotiate with those in power has historically economically elevated members of marginalized communities, including the Tharu. At the same time, as discussed in the last chapter, members of the Tharu community often associate their ongoing marginalization and their families' loss of land with their lack of formal education and the perceived trickery of people from other communities with greater connections to power. In Nepal, truth-seeking commissions, argued to be more victim-centric than prosecutions, have thus far prioritized some victims' complaints to the exclusion of others. In 2008, knowledge of the truth-seeking commissions was

directly proportional to educational status. People in the higher educational cluster are more likely to know about the TRC than are those who are illiterate or less educated, 84% who had received a SLC had heard about the TRC as opposed to only 58% of the illiterate respondents (2008 Nepali Voices).

In my own research, I found knowledge of the commissions much lower. In February 2016, before the truth-seeking commissions began accepting complaints in Nepal, most of my interviewees in Bardiya who experienced a gross violation of human rights when they were younger than 18 years of age, including Kumar, had no knowledge of the TRC or CIEDP. Similar to the findings in *Nepali Voices* (2008), lack of knowledge of the commissions was correlated with educational status and, in addition, distance from the capital. However, those with connections to victims' organizations in Bardiya, regardless of their educational status, had knowledge of the TRC and the CIEDP in February 2016. By the end of the complaint-taking period in July 2016, the TRC claimed they received 55,000 complaints (personal interview with member of the TRC) and the CIEDP claimed they received more than 2,800 complaints (personal interview with member of the CIEDP). Yet, in conversations and interviews with victims after the complaint-taking processes, many stated they did not fully understand the purpose of the commissions although they had been convinced to file a complaint.

In the Kathmandu Valley, comprised of three districts, there were five offices where victims could file complaints: the national headquarters of the CIEDP, which only accepted complaints regarding disappearances during the armed conflict, the TRC, which accepted all conflict-era complaints other than disappearances, and three local peace committee offices. From the village where I was residing in a rural village in Bardiya, it took me seven hours by public transportation to reach the district headquarters of Gulariya where all victims in the district were required to travel to file a complaint at the local peace committee office. Because there were only two staff members in the local peace committee office accepting complaints, the local peace committee office in Gulariya was often full and required victims to wait to meet with a staff member. For victims without the access to resources to travel via motorbike or private car, it was difficult, if not impossible, to travel to the LPC office to file their complaint and return home on the same day. For victims already facing a lack of resources, the process was made more difficult. While public transportation costs are low in Nepal, for rural victims, many of whom are extremely poor, the cost of transportation combined with the loss of wages from taking the time to file a complaint, and the task of arranging a place to sleep before returning home via public transportation made filing a complaint extremely challenging.

Literacy in rural areas is considerably lower than in Kathmandu, and Nepalis who are poor, from marginalized caste or ethnic groups, or women are far more likely to be illiterate (Bennett 2006; Guneratne 2002; Masklak 2003; Robins 2012; Subba, et al. 2014). In addition, as discussed in Chapter 5, attending school was made considerably more difficult by the armed conflict (Caddell 2007; OHCHR Report 2012; van Wessel and van Hirtum 2013). Because the process of filing complaints was written rather than oral, victims who were literate and had knowledge of the truth-seeking commissions did not require the assistance of a staff member. They could complete their forms independently and submit completed forms in an envelope allowing them greater confidentiality.

Given that the truth commissions were implemented by the state, and the government officials accepting complaints were nationally appointed, unsurprisingly, many victims prioritized their confidentiality as a means to ensure their safety in rural areas. For victims who were illiterate, they were forced to rely on a staff member of a government-instituted commission to complete a form describing their experiences of human rights violations committed by people representing the Nepali government or the Maoists, whose leaders,

following the cessation of conflict, are in the highest levels of the Nepali government. In my observations, the government office accepting complaints in Bardiya was often filled with conflict victims, and the two staff members were constantly expressing how overwhelmed they felt assisting victims to file complaints. Due to the lack of staff members, victims requiring assistance were forced to wait and those giving statements verbally forced to do so without privacy. Thus, again, victims' pre-war access to education influenced their ability to participate in state-led truth-seeking processes. Conversely, in Kathmandu, I rarely witnessed victims waiting more than fifteen minutes to meet with a staff member. Conversations with members of both commissions revealed they were aware of these barriers and unwilling to facilitate more inclusive processes.

For victims who were literate, the complaint forms were prohibitive in their language and space. Victims were given minimal space in which to write, and the complaint form requested that victims describe the "gross violation of human rights." As Robins (2011:78) argues regarding the use of human rights language in processes of transitional justice in Nepal, "the privileging of an external discourse can empower elites and outsiders at the expense of victims, particularly the most disempowered, who have both the greatest needs and the least access to the language of rights." Further reestablishing power dynamics, marginalization, and exclusion, the Government of Nepal and the commissions approved and printed all complaint forms in Nepali and failed to hire staff fluent in other languages. The latest census, conducted in 2011, lists 123 languages spoken in Nepal.

The paper format, the language of the forms, the failure to hire staff fluent in languages other than Nepali or to provide a private space during the complaint-taking processes all reproduced the historical exclusion and marginalization of victims from the indigenous Tharu community. As in the Interim Relief Program discussed in Chapter 5, the policies and practices of Nepal's truth commissions also demonstrate the politics of victimhood under the guise of redressing conflict-era violations. Victims were reduced to a single criterion or essence within a reconstituted display of exclusionary nationalism (see Calhoun 1997:18 on nationalist essentialism). As Calhoun (1997:50) argues,

traditions are not simply inherited, they have to be reproduced; stories have to be told over and again, parts of traditions have to be adapted to new circumstances to keep them meaningful...

Within the context of state-led truth commissions, among the stories powerful government officials tell are that everyone in Nepal is both literate and Nepali speaking. The restrictions imposed upon truth telling through written forms only available in Nepali highlight how the state enforces and legitimizes historically embedded forms of homogenous and exclusionary nationalism. Aspects of Nepal's tradition of homogeneous nationalism have been simultaneously reproduced and adapted to create a façade of inclusion, and yet, the performance of inclusion in Nepal's truth commissions only reproduces entrenched patterns of exclusion.

Further, the commissions, focused on gathering evidence, required victims to provide documentation of the human rights violations they claimed to have experienced during Nepal's armed conflict. Members of both commissions repeatedly told me in interviews that they would not review "complaints" that did not include sufficient evidence. This stipulation, in particular, illuminates how the commissions performed inclusion while systemically placing barriers upon victims marginalized from state processes. Without connections to the UN or an international non-governmental organization, torture victims in Bardiya would have to seek "evidence" from their torturers. I contend the stipulations placed upon victims were implemented to conceal state complicity and protect political leaders from prosecution.

When I first met Anil in April 2016, he was aware of both truth-seeking commissions but said he would not file a complaint due to his distrust of the process. He later filed a complaint with the disappearance commission describing his knowledge about the death and burial of fellow prisoners at the army barracks where he was held and also to the truth commission concerning his own arrest and torture. In subsequent conversations, Anil talked about his irritation with the process of filing a complaint with the truth commission. Staff from the commissions told him that if he wanted his complaint to be considered then he must provide evidence of his arrest and torture. Yet, due to his age (younger than 18) at the time of his arrest, his name was excluded from the reports he filed with the OHCHR and the National Human Rights Commission.

Thus, although the TRC policy explicitly states priority would be given to "children," Anil's age at the time he filed reports of torture created additional barriers to his inclusion in state-led truth-seeking processes. When he went to the National Human Rights Commission in Kathmandu, their office stated they did not have documentation of his arrest or torture. Further, the Government of Nepal requested the OHCHR to leave the country following the release of the

2012 conflict report. Anil asked if I would help him to contact the OHCHR. Although we both initiated contact with the OHCHR in an attempt to help Anil to receive the documentation required by the TRC, we never received a response. After returning to the NHRC and explaining the details of his arrest and torture, the office agreed to provide the report he had filed.

Kumar also decided to file a complaint with TRC. He learned about the process through Priya and filed when the LPC staff, along with Priya and another member of a victims' organization, assisted victims in his village to file complaints. He didn't have "evidence" of his torture, but submitted a complaint anyway hoping for "anything...if they provided something, it would be good." He also expressed his desire for medical treatment, financial compensation, the prosecution of his torturer, and an escape for his children from *kamaiya* labor.

Anil and Kumar both experienced torture as children at the hands of the state despite their divergent residences, access to resources, and caste membership. However, members of TRC explained to me that given the high number of complaints they received, they were giving priority to complaints with the greatest documentation. More specifically, members of the commission explained, they would not investigate complaints without sufficient evidence, and subsequently, Nepalis filing complaints without sufficient evidence would likely not be recommended for financial reparations, compensation for medical treatment, vocational training, or scholarships. Yet, members of both commissions expressed their intention to investigate and recommend financial reparations for complaints with sufficient evidence. When I questioned members of the commissions on what constituted sufficient evidence, they explained paper documentation from the National Human Rights Commission, a non-governmental organization or international non-governmental organization, a police report, and/or a letter from a local peace committee would be accepted as evidence. But, as my research showed, not all victims of Nepal's armed conflict had access to reporting and documentation.

In an interview with a physician from a prominent non-governmental organization in Kathmandu who worked with torture victims during the armed conflict, he stated that most torture victims in Nepal are from marginalized communities without access to powerful political connections. When they lack political connections, he continued, they don't have the option of filing a police report because the police are typically involved in victims' torture. While this non-governmental organization was able to provide some medical treatment to torture victims, the staff lamented not having sufficient funding to follow up with victims. None of the torture

victims I interviewed in Bardiya had received financial compensation or medical treatment for their torture. In November 2016, the Supreme Court ordered the TRC to investigate all cases. Yet, members of the commission continually stated a complaint without sufficient evidence would not be investigated further. Given the commission's lack of sufficient staff to investigate more than 58,000 cases, if they're reviewed at all, it's more likely that victims with greater access to mechanisms of reporting will have their cases examined. If so, this may subsequently lead to their receiving financial compensation or medical care to the exclusion of victims who couldn't provide sufficient evidence.

Conclusion

Victims' positionalities have determined their access to transitional justice mechanisms in Nepal; state-led truth commissions systemically excluded the most marginalized victims. Victims' preexisting access to knowledge and resources determined their ability to share their knowledge or "truth" of their conflict-era human rights violations with the truth-seeking commissions. Many victims wonder what kind of truth will be produced through Nepal's TRC and CIEDP given the political influence of the members of both commissions. Rather than redress the human rights violations they experienced during armed conflict, through the exclusion of victims generally, and marginalized groups specifically, processes of transitional justice in Nepal have entrenched inequality and distrust in the government. My interviewees, including Anil and Kumar, who were tortured as children described their ongoing fear and distrust of the Nepal government, the police, and the Army.

In Chapters 4 and 5, I described how victims' pre-war positionalities have impacted their lives during the "transitional period." In this chapter, the construction of "childhood" and the performed inclusion of "children" are illuminated through ethnographic research with people who, according to international law, are the intended beneficiaries of state-led transitional justice mechanisms prioritizing children. Within this context, power has been restructured to present a façade of inclusion through policies mandating that people from politically underrepresented groups serve as members of Nepal's truth commissions and that the commissions give priority to "children," among other groups. I contend the performance of the inclusion of "children" and historically excluded groups in truth-seeking processes serve to maintain historically sedimented patterns of exclusion.

Chapter 7

Conclusion and Summary

During my preliminary research, children were often cited in interviews as “the most affected” by Nepal’s armed conflict. And yet, 14 months of ethnographic research revealed the concept of “children” within the context of transitional justice in Nepal is contested and politicized. State-led transitional justice policies, although they mention “children,” do not include stipulations for people who were children during the conflict that have now transitioned into adulthood. In practice, this is confusing, because Nepal’s armed conflict started in 1996 and ended with the signing of the peace agreement in 2006. However, the only state-led mechanisms actualized thus far for victims of conflict-era human rights violations, the Interim Relief Program and “complaint-taking” through two truth commissions, were implemented in 2008 and 2016 respectively. Although “children” are included in transitional justice policies, members of both truth commissions gave divergent responses regarding definitions of “children” and what their inclusion might mean more than ten years after the cessation of conflict.

This dissertation highlights how, in Nepal, access to mechanisms of transitional justice mimics historical patterns of inequality and marginalization. While the Interim Relief Program included scholarships for “children,” the stipulations, especially the policy defining children as younger than 18, to qualify for and obtain the scholarships ensured some children’s exclusion. Significantly, not all children were excluded. Interviews with members of both truth commissions revealed the semblance, if not the practice, of inclusion and equality were perceived as important. These findings led me to examine the ways in which inclusion is performed through processes of transitional justice. I contend the performance of inclusion through state-led transitional justice mechanisms serves to conceal the state’s commitment to maintaining structural inequality. Further, the façade of inclusion functions as a distraction from the demands for the social, economic, and political inclusion of marginalized groups on which the armed conflict was fought.

People implementing transitional justice and peacebuilding mechanisms to help children cited their own powerlessness to change systems of power that entrenched exclusion and inequality. Transitional justice processes are typically employed alongside a liberal peacebuilding model where democracy is touted as a bastion of freedom for all who reside within the manmade boundaries of the state. Yet, in the Introduction, my interview with Udaya

highlights that even within the UN system, freedom is illusory. Global systems of power, as exemplified through the UN, ensure the continued exclusion of marginalized states from greater access to resources and power. Further, when “democracy” is implemented through international aid, national political leaders are beholden to diplomats, donors, and the UN rather than accountable to their citizens. The influx of international aid in Nepal has, till now, increased economic inequality between people with the greatest access to resources and people living in extreme poverty. Much like the performance of the inclusion of children in transitional justice processes, this begs the question: who and what do such illusions serve? Who benefits when constraint is recognized as freedom and exclusion is performed through policies of inclusion and redress? And, within these contexts where freedom and inclusion are performed, who has the power and resources to negotiate and benefit from these structures?

In this dissertation, I examine how state-led processes of transitional justice serve as a distraction from claims for equitable access to power and resources. This is particularly salient within the Nepali context where the armed conflict was launched in a highly unequal society with a history of feudalism. However, neither the conflict nor the “transitional period” have redressed historically sedimented inequality and marginalization. Nepal’s current (2015) constitution stipulates that nothing shall prevent special arrangements for the advancement, empowerment, protection, and political representation of specific groups: victims of conflict, families of the disappeared, women, children, laborers, the economically poor, Khas Arya, Dalit, Adivasi Janajatis, Maheshis, Tharus, and other communities. Yet, the vast majority of Nepal’s political leaders are Khas Arya, and the dominance of both the Nepali language and Hindu religion are associated with Khas Arya migration into Nepal. The named inclusion of Khas Arya, the traditionally politically and economically dominant group, as a protected group with Nepal’s latest constitution ensures historically sedimented power structures can be maintained. There have been changes over the last twenty years, to be sure, and inclusion has been performed in various iterations: a peace agreement with provisions for social and economic justice for marginalized groups; the drafting of a new constitution codifying the right to equality and establishing Nepal as a multiethnic, multi-religious, and multicultural federal democratic republic with special arrangements for specific groups; and transitional justice policies that list women, children, and indigenous groups as priorities. Nevertheless, my research demonstrates how Nepali elites have reorganized to secure their grasp on power while claiming to redress

conflict-era rights violations. Dominant ideologies of nation-states and nationalism present particular geographic boundaries as containing a homogenous group of people who can be understood by certain simple characteristics. The primacy of the Nepali language in education, land contracts, and governance is one example of how homogenizing ideologies of nationalism have excluded the majority of the population.

In the Introduction, Udaya describes how international development frameworks and homogeneous iterations of nationalism, particularly as exemplified through Nepal's formal education system, are the "cause of violence" and "'unpeace' in the life of Nepali people." Further, international development policies led to the proliferation of private English-medium schools, which have only widened the gap in access to resources, namely lucrative employment in Kathmandu and abroad, between historically privileged and marginalized groups. Chapter 5 examines the significance of education in Nepal and the long history of inequitable access to schooling. During the armed conflict, Maoists sought to combat inequitable access to education by banning private schools; both private and public schools were significant sites during the armed conflict as school buildings, teachers, and students were affected by Maoist combatants and state security forces. I examine the meanings that victims and their families in Bardiya assigned to education and their experiences of inequitable access to scholarships targeting "conflict affected children" as part of Nepal's Interim Relief Program and contend knowing/not knowing are utilized to conceal systems of power that ensure the continued exclusion of Nepal's most marginalized groups. I argue the barriers conflict victims in Bardiya experienced trying to access scholarships demonstrate not only that structural inequality still exists during the "transitional" period but also that the state is committed to maintaining it.

Inequality on the basis of diverse identities within Nepal was presented as a problem that could be dealt with through the named inclusion of certain groups within transitional justice and nation-building policies. Despite hundreds of years of structured exclusion based on various aspects of people's identities, named groups targeted through transitional justice mechanisms, such as "children" were treated as static and homogenous. In this dissertation, I challenge homogenous and fixed conceptualizations of "children" and "the local" and analyze the diverse and dynamic ways in which people experience armed conflict and its aftermath as I examine how power also reorganizes in dynamic ways.

In Nepal, transitional justice is utilized, politicized, and manipulated by powerful domestic and international actors. The UN, along with most international non-governmental organizations, diplomats, and donors, boycotted Nepal's truth commissions for, among other reasons, their politicization and the inclusion of amnesty provisions for gross violations of human rights. This position obscures the role of international development in increasing economic inequality and marginalization in Nepal, the complicity of international actors (i.e. the U.S., the U.K., and India) in providing logistical and financial support to state security forces as they committed gross violations of human rights against civilians, and the international community's prioritization of liberal peacebuilding rather than redress for the poorest and most marginalized victims through access to basic resources. Following ten years of armed conflict to ameliorate structural inequality, state-led transitional justice mechanisms have served to entrench the exclusion of economically, politically, and socially marginalized groups and ensure Nepalis' continued distrust in the national government. Thus, while addressing structural inequality may be beyond the reach of normative transitional justice mechanisms, the Nepali context demonstrates how processes of transitional justice cannot redress conflict-era gross violations of human rights without redressing inequitable systems of power.

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Vita

Krista Elizabeth Billingsley received her Bachelor of Arts in International Studies with a minor in Political Science from the University of West Florida in 2007. After completing her bachelor's degree, she worked in the Office of Admissions at the University of West Florida, moved back to Tennessee where she graduated from "cow college," and traveled the world for five months. In 2011, she started her doctoral program in the Department of Anthropology at the University of Tennessee. With the generous support of a Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship, a Wenner-Gren Foundation Dissertation Fieldwork Grant, and a W.K. McClure Scholarship for the Study of World Affairs as well as funding at the University of Tennessee from the Graduate School, the Department of Anthropology, and the Center for the Study of Youth and Political Conflict, she completed 14 months of ethnographic research in Nepal. As a graduate student, she taught 25 classes at the University of Tennessee. Krista received her Doctorate of Philosophy in Anthropology with a Graduate Certificate in Disasters, Displacement, and Human Rights in May 2018. She was married to Heath Nicholas Kirby on October 10, 2015. They live in their hometown of Gainesboro, Tennessee with Cat and the best old dog in the whole wide world-Sam.