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## Analyzing Post-Revolution Transitional Justice Policy in Myanmar: Threats and Opportunities

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# **Analyzing Post-Revolution Transitional Justice Policy in Myanmar: Threats and Opportunities**

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## **Abstract**

The Spring Revolution in Myanmar, subsequent to the 2021 military coup, has resulted in altered political landscapes with new stakeholders, alongside instability, warfare, thousands of fatalities, and millions displaced internally. These tragedies primarily stem from the military's direct assaults on innocent populations, the apprehension of young individuals, the incineration and plundering of residences, and the aerial bombardment of residential dwellings. Victims of such calamities seek and advocate for transitional justice that delivers justice for the affected individuals. Consequently, I subjected the National Unity Consultative Council's transitional justice strategy to critical analysis and examination. I utilized primary data sources and existing literature on transitional justice theories in our analysis. This transitional justice policy offers multiple benefits and values pertaining to retributive and restorative justice; nonetheless, external challenges persist in the current political landscape. Collective forces among the revolutionary groups will be the answer to the successful implementation of this policy.

Keywords: revolution, justice, ethnicity, retributive, restorative, constructivist, SWOT

## **1. Introduction**

Following a third military takeover in February 2021, Myanmar, a Southeast Asian nation sandwiched between China and India, is currently experiencing an armed revolution, namely the Spring Revolution. This recent conflict adds to the country's long history of armed struggles, which have made the country home to one of the world's longest-running internal conflicts. Following its independence, the country has seen three major military coups: the first in 1962, the second in 1990, and the third in 2021. The political landscape was drastically changed by each of these coups, and the most recent rebellion has resulted in a broad-based revolution and strong public opposition.

The coup of February 2021 sparked nationwide opposition and introduced a variety of resistance strategies. Initially, thousands of citizens took to the streets in peaceful protest, voicing their disapproval of the military takeover. At the same time, a significant number of government employees initiated the Civil Disobedience Movement (CDM), refusing to work in support of the military regime. However, the military responded with ruthless and inhumane violence—including the shooting of nonviolent protesters, the arbitrary detention of innocent people, and widespread home raids—instead of acknowledging and honoring the people's demands. Such heavy-handed responses by the military made a dramatic escalation in the Conflict arose as thousands of young people, having learned from the failure of nonviolent protests, opted for armed resistance. They

sought training and weapons from long-established ethnic armed organizations, which had been fighting the military dictators for decades.

In its attempt to legitimize its authority, the military junta rebranded itself as the State Administrative Council (SAC)<sup>1</sup>. The first notable armed resistance against the SAC occurred on April 24, 2021, when the Chin ethnic people from Mindat township<sup>2</sup> fought back using traditional hunting rifles known as "*Tumi*." With the emergence of multiple defense organizations to contest the SAC's authority, this incident signaled the start of a nationwide wave of armed resistance. Alongside the growing armed resistance, peaceful protests and CDM activities continued, underscoring the multifaceted nature of the revolution. In response, the SAC escalated its oppressive tactics, resorting to the burning of civilian homes, sexual violence, mass arrests, and restrictions on the movement of the people. Most recently, the military has relied heavily on airstrikes, targeting civilian areas and internally displaced persons (IDP) camps, causing substantial casualties and further displacing already vulnerable populations.<sup>3</sup> As reported by Nyan Lynn Thit Analytica (2024), the SAC has conducted a significant number of airstrikes over a considerable period of time, with 813 days out of 1,308 days from February 2021 to August 2024 dedicated to such operations. These have resulted in a total of 3,292 incidents of airstrikes<sup>4</sup>.

In order to strengthen its hold on power, the SAC brought back into effect a mandatory conscription law that had lain dormant since 2010 and compelled millions of young people to serve in the military. The law applies to men aged 18 to 35 and women aged 18 to 27. This law triggered a mass exodus of young people, many of whom fled the country illegally, while others were forcibly recruited into the military. Since the February 2021 coup, the Assistance Association for Political Prisoners (AAPP)<sup>5</sup> has verified the deaths of 6,278 people, including pro-democracy activists and civilians<sup>6</sup>. Furthermore, the regime has arrested 28,560 individuals, and 21,820 remain in detention, many of whom are serving lengthy prison sentences. However, these figures likely underrepresent the actual numbers, as the regime's repression often goes undocumented in remote regions.

Amidst this environment of brutal oppression, many citizens—having lost loved ones, homes, and livelihoods—are now grappling with deep uncertainty about the future. After nearly three years of extreme hardship and injustice, there is a growing demand for a reliable, well-planned transitional justice process (Myanmar Now, 2023; Huang, 2023). The aim is not vengeance but a pursuit of

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<sup>1</sup> <https://myanmar.gov.mm/state-administration-council>

<sup>2</sup> <https://www.facebook.com/chinDefenceforce/videos/889771476172640>

<sup>3</sup> <https://data.unhcr.org/en/situations/myanmar>

<sup>4</sup> <https://www.nyanlynthitanalytica.org/resources/publication/srs>

<sup>5</sup> A human rights organization based in Mae Sot, Thailand, and Rangoon, Burma. AAPP seeks the release of all Burmese political prisoners and enhances their quality of life. Website: [https://aappb.org/?page\\_id=5628](https://aappb.org/?page_id=5628)

<sup>6</sup> <https://aappb.org/?cat=109A>

justice and accountability to ensure that their sacrifices are not in vain<sup>7</sup>. For many, the hope of a fair, just nation lies in this transitional justice process.

### **(1) Literature Review**

Regarding literature and publications, numerous policy briefs and books on transitional justice in Myanmar already exist. Ian Holliday's (2014) "Thinking about Transitional Justice in Myanmar" presents the prospects for transitional justice in Myanmar within its intricate socio-political context and advocates for a contextualized methodology. Ian's idea for transitional justice. All stemmed from his observations of the nation's extensive history of ethnic clashes, divisions, and political persecution. He emphasized the necessity of a gradual, inclusive approach that reconciles the demands for accountability, healing, and reconciliation. The publication "Transitional Justice: Myanmar Case Study" was released in 2017 by Asia Justice and Rights. This policy paper concurs with Ian Holliday's position, emphasizing the importance of including local perspectives and participation in transitional justice processes but also underscoring the problems presented by ethnic strife.

The Dukalskis' paper (Dukalskis, 2015), "Transitional Justice in Burma/Myanmar: Crossnational Patterns and Domestic Context," delineates the crossnational patterns of transitional justice and contends that Myanmar encounters distinct domestic challenges shaped by its historical and political contexts, which complicate the execution of transitional justice mechanisms. Although this paper's arguments and conclusions are reasonable and self-reflective, the research was done before 2015, so it does not take into consideration the most recent events in Myanmar. The 2017 Rohingya crisis<sup>8</sup> involved widespread violence and armed assaults that compelled thousands of Rohingya to abandon their residences. The Spring Revolution in 2021 fundamentally altered the political landscape in Myanmar. Dukalski's paper was partially finalized by "Myanmar's Democratic Transition: An Opportunity for Transitional Justice to Address the Persecution of the Rohingya." Shatti (2018) specifically looks at the Rohingya people's situation and difficulties in this paper. She argues that democratic changes could help hold criminals accountable, prevent further abuses, and meet the unique needs of the Rohingya community. This document provides policy recommendations for transitional justice for the Rohingya population, while it does not address the latest crisis dynamics in Myanmar post-2021.

Thomson's briefing paper (2016) analyzes the changing political landscape of Myanmar and proposes a Myanmar-specific transitional justice framework, customized for the country's distinct setting. Nonetheless, the chronology and setting of this method occurred during the 2010-2020 period, when the 2008 Constitution was in effect and the nation was governed by a semi-authoritarian military regime. According to Aguirre et al. (2021), institutional changes are required in Myanmar's transitional justice system in order to prevent corporate land rights violations. They

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<sup>7</sup> [https://www.youtube.com/watch?v=2M\\_WQM6pwvM](https://www.youtube.com/watch?v=2M_WQM6pwvM)

<sup>8</sup> <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/#RohingyainBangladesh>



advocate for legal framework reforms to ensure corporate accountability in advancing the nation's progress towards the rule justice system and equitable development. This paper's ideas are grounded in the nation's current legal texts and explicitly focus solely on land reforms. However, the nation is progressing towards a novel political framework, independent of established laws and regulations.

An examination of the current literature identified three domains where additional research would be advantageous. Primarily, much of the material was generated and contextualized prior to the Spring Revolution, while the 2008 Constitution was in effect. Certain writings concentrated on a certain ethnic community, namely the Rohingya, or addressed particular issues, such as land rights. The emergence of this new terrain has resulted in considerable changes as the country experiences a phase of major transformation. This is happening simultaneously with the rise of new political entities and the implementation of new regulations during the ongoing spring revolution. The second gap in the current literature is that the documents and policy briefs were developed and suggested by individual academics, professors, and institutions rather than by a national-level political coalition, such as the NUCC, which possesses the authority to publish transitional justice policies. A third deficiency in the current research is the lack of analysis of transitional justice policy. This research paper aims to address the identified gaps in the existing literature and to educate and inform policymakers, researchers, and the broader public interested in the topic of transitional justice in Myanmar.

## **(2) Research Aim**

The objective of this study is to undertake a critical assessment and evaluation of Myanmar's Transitional Justice Policy, which was written and ratified by the National Unity Consultative Council (NUCC), and to ascertain its potential impact. The research will employ the SWOT analysis tool to evaluate the policy's strengths and weaknesses, with the United Nations Transitional Justice Principles serving as a reference point. Furthermore, this research will examine external opportunities and threats that may affect the implementation of the policy. The researcher utilizes both primary and secondary data sources, including original data published by the NUCC and existing literature on transitional justice theories, in order to conduct an in-depth analysis.

## **(3) Research Question**

In order to achieve the research objective, the central question that will guide this research process is as follows:

1. How does the NUCC's transitional justice policy address Myanmar's post-revolution challenges?

In order to address the central question, three sub-set questions will be investigated.

- (1) What are the strengths and weaknesses inherent in this transitional justice policy?
- (2) What opportunities and threats exist in the actual politics that could influence the implementation of Myanmar's transitional justice policy?
- (3) What measures should be taken in order to ensure the successful implementation of this policy in Myanmar?

#### **(4) Research Design**

The research design employed a qualitative analysis with a focus on the Myanmar Transitional Justice Policy. The exploratory approach to qualitative analysis is employed to investigate a problem without clear expectations regarding the outcome (Stebbins, 2001; Babbie, 2020). This approach is particularly beneficial in the field of peace and conflict studies and is employed to analyse the strengths, weaknesses, opportunities, and threats associated with the NUCC's policy. opportunities,

#### **(5) Data Collection**

The primary data collection method employed in this research is through interviews with members of the NUCC-TJ. Additionally, interviews and observations were conducted with the Myanmar diaspora in the USA regarding the transitional justice process in Myanmar. Secondary data was also gathered from the transitional justice policy, various articles, and reports about human rights and justice-related matters pertaining to Myanmar.

#### **(6) Research Analysis Tools: The SWOT Analysis**

There are many analytical tools available to analyze, examine, and appraise plans, strategies, policies, and decision-making in a variety of fields. Included are the SWOT analysis, PESTLE analysis, TEMPLE analysis, VRIO analysis, and 9 M analysis. Each of these analyses possesses distinct advantages and disadvantages.

The PESTLE study, encompassing political, economic, social, technical, legal, and environmental dimensions, facilitates an understanding of macro-level management perspectives (Aguilar, 1967). This analysis of nine sectors emphasizes the external elements affecting the organization's strategy but neglects to consider internal strengths and weaknesses, so failing to evaluate the merits of a policy's substance. The TEMPLE analysis, akin to the PESTLE analysis tool but incorporating market as an additional element (Fahey, 1986), serves as an external-oriented analytical instrument more suited for market-driven planning than for policy review.

The VRIO analysis, which denotes value, rarity, imitability, and organization, was introduced by Barney (Barney, 1991). This analysis tool is entirely internal-focused, thoroughly assessing the value of internal policies, in stark contrast to earlier analysis tools. This policy is once again a unilateral instrument for the understanding of transitional justice policy. The 9 M analysis evaluates the elements of management, personnel, machines, materials, methods, measurement,

milieu, money, and maintenance within an organization (Juran, 1989). In order to investigate the underlying causes of problem-solving situations, this tool is intended for organizational management analysis. This technique is therefore unsuitable for analyzing transitional justice policy, as it does not pertain to an organization's management plan.

Albert Humphrey created the SWOT analysis in the 1960s, and it is used to assess possible effects on a strategy, policy, or organization from both internal and external perspectives (Rozmi et al., 2018; Wu, 2020). The SWOT analysis is considered a comprehensive strategic tool that allows a corporation to address weaknesses, reduce threats, use external opportunities, and utilize strengths. At a 1963 corporate policy conference, Harvard University evaluated the SWOT analysis tool, recognizing it as a substantial advancement in strategic thinking (Hill & Westbrook, 1997; King, 2004). Subsequently, from the 1960s, the SWOT analysis method was adopted by countless scholars, researchers, and academics across various disciplines and situations, including education, industry, and agriculture.

SWOT consists of four elements: strengths, weaknesses, threats, and opportunities. The four components specify either internal or external factors. Strengths and weaknesses are associated with internal analysis, whereas threats and opportunities refer to the evaluation of external elements. The SWOT matrix can be concisely defined as follows:

1. The evaluation of the internal merits and strengths of a plan or policy.
2. The evaluation of the internal flaws and weaknesses of a plan or policy.
3. Examination of external opportunities that may influence the achievement of the policy's objectives
4. External dangers from the environment that may impede the attainment of the policy's objectives (Aldehayyat & Anchor, 2008; Lee & Lin, 2008; Shrestha et al., 2004).

Among the analytical tools, including PESTLE, TEMPLE, VRIO, 9M, and SWOT, the SWOT analysis will be utilized to assess the content and substance of the Transitional Justice policy, as well as to evaluate the specific risks and opportunities within Myanmar's political landscape for the implementation of transitional justice. This analytical instrument is appropriate for this evaluation as it provides a systematic and transparent approach for assessing both the internal merits of the policy and its external potentials comprehensively. The dual perspective of strengths, weaknesses, opportunities, and threats provides a thorough comprehension of the transitional justice framework. Examining these two distinct viewpoints, the core of TJ and the concrete reality with its consequences, it is anticipated that the findings will illuminate readers and potentially influence policymakers.

## **(7) Significance of the Study**

The necessity for transitional justice in Myanmar can be gleaned from the country's troubled history, particularly the two key lessons that can be derived from this experience: firstly, the guarantee of immunity for Myanmar's former military from legal action against the crimes committed, and secondly, the reconciliation policy of the government led by Daw Aung San Suu Kyi during the 2015-2020 period.

The 2008 Constitutions included an article, Article 445<sup>9</sup>, which prohibiting legal action of the past councils stated that all rules, laws, and actions taken by the two former governing councils, the State Law and Order Restoration Council (SLORC) and the State Peace and Development Council (SPDC), were to be officially transferred to a new government elected in accordance with the provisions of the 2008 Constitution. Consequently, the incumbent administration has enacted measures to safeguard members of the aforementioned councils and the government itself from legal prosecution for actions undertaken in the course of their official duties. This has effectively precluded any possibility of legal action against them for the aforementioned actions.

Consequently, despite the fact that these two councils perpetrated a multitude of war crimes, genocidal acts, and human rights violations against ethnic groups, democratic members, and politicians, there was no legal basis for pursuing legal action or seeking retribution for past atrocities. This represents a significant political lesson in Myanmar.

The second lesson pertains to the 'Reconciliation Policy' of Daw Aung San Suu Kyi. In her inaugural Burmese New Year's message, delivered on 18 April 2016, Daw Aung San Suu Kyi, the president of the NLD, articulated a vision for peace and a federal democratic union, emphasizing the intertwined nature of these two concepts and underscoring the necessity for constitutional reform. She further highlighted the pivotal role of national reconciliation in this process (Mizzima, 2016 April 18).

In these words, Aung San Suu Kyi set forth the conviction that national reconciliation and peacebuilding should be regarded as the most pressing concerns of the Myanmar government. Consequently, numerous retired military personnel were appointed to ministerial and deputy ministerial roles within the cabinet. She fostered positive relations with the military, even appearing before the International Court of Justice (ICJ)<sup>10</sup> to defend the military's actions against the Rohingya people, which the court has labelled as genocide. Despite her efforts to foster

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<sup>9</sup> All policy guidelines, laws, rules, regulations, notifications and declarations of the State Law and Order Restoration Council and the State Peace and Development Council or actions, rights and responsibilities of the State Law and Order Restoration Council and the State Peace and Development Council shall devolve on the Republic of the Union of Myanmar. No proceeding shall be instituted against the said Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.

<sup>10</sup>[https://www.aljazeera.com/news/2019/12/12/transcript-aung-san-suu-kyis-speech-at-the-icj-in-full/?utm\\_source=chatgpt.com](https://www.aljazeera.com/news/2019/12/12/transcript-aung-san-suu-kyis-speech-at-the-icj-in-full/?utm_source=chatgpt.com)



reconciliation with the military, her policy proved unsuccessful, resulting in another coup in 2021. In light of this historical and recent experience, there is a clear imperative for the establishment of a robust and dependable transitional justice process within the country.

### **(8) Limitation of the Research**

In conducting research on this policy, I engaged in communication, interviewed the JCC-TJ members, and independently studied the policy. Owing to security concerns and the NUCC's Terms of Reference, I am unable to reveal the identities of my interviewees, members of the JCC-TJ, as well as the names of participants and their respective organizations within the TJ-Taskforce group. Owing to these restrictions and limitations, I can only discuss and include only material and data that are available to the public and that can be disclosed in this research. In analyzing and evaluating the policy, I utilize both the policy written in Burmese language and an unofficial English translation of this policy. Thus far, the JCC-TJ has not released any official English translation for public access.

## **2. Political Stakeholders in the Spring Revolution**

To fully understand Myanmar's transitional justice policy, it is important to first grasp the political context that has emerged during the Spring Revolution. Prior to the 2021 revolution, armed resistance movements in Myanmar were primarily led by ethnic resistance organizations. These organizations, including ethnic militias and long-established revolutionary organizations, had been fighting for autonomy and rights for over six decades. After the 2021 coup, these ethnic resistance groups played a critical role in training and supporting the new wave of young revolutionaries who joined the armed struggle.

On 1 February 2021, the military executed an unjustified political coup, alleging that the democratically elected National League for Democracy (NLD)-led government had perpetrated voting fraud in the 2020 general election. Daw Aung San Suu Kyi, the head of the NLD, along with several other political leaders and bureaucrats, was apprehended during the night. Immediately following the coup, millions of Myanmar citizens protested and revolted in the streets. On February 5, 2021, just days after the coup, the Committee Representing Pyidaungsu Hluttaw (CRPH)<sup>11</sup> was formed. The CRPH is composed of 17 elected members of parliament from the National League for Democracy (NLD), many of whom were young political figures, as the senior leadership of the NLD had been arrested on the day of the coup. The CRPH stands as the legitimate legislative body in opposition to the military junta.

Another critical player in this political landscape is the National Unity Consultative Council (NUCC)<sup>12</sup>, established on March 8, 2021. The NUCC is a broad political coalition that includes

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<sup>11</sup> <https://crphmyanmar.org/history-and-formation-of-crph/>

<sup>12</sup> <https://www.nucc-federal.org>

representatives from the CRPH, ethnic armed organizations such as the Karen National Union (KNU)<sup>13</sup>, civil strike committees, and ethnic political groups like the Interim Chin National Consultative Council (ICNCC)<sup>14</sup> and the Mon State Federal Council (MSFC)<sup>15</sup>. The NUCC is notable for being one of the most inclusive political coalitions in Myanmar's recent history, encompassing a wide range of ethnic and political stakeholders.

The NUCC has been central to the drafting of a new political framework for Myanmar, issuing the two-part Federal Democratic Charter (FDC)<sup>16</sup>, which serves as a blueprint for replacing the 2008 military-drafted Constitution. The transitional justice policy that I will assess in this paper was drafted by the NUCC's subcommittee. On April 16, 2021, the NUCC formed an interim government known as the National Unity Government (NUG), which includes representatives from the CRPH, ethnic political groups, and armed resistance organizations. The NUG, alongside the NUCC and ethnic resistance groups, has taken on the role of political leadership during this revolutionary period. These newly formed political and revolutionary coalitions, groups, and organizations became key actors and stakeholders in the Spring Revolution.

### **3. Political Roadmap of the NUCC and NUG**

The NUCC, NUG, CRPH, and several ethnic political organizations are following the political roadmap laid out in the Federal Democratic Charter (FDC). The FDC is issued by the NUCC and serves as the guiding document for the revolution. It outlines the vision for a new federal democratic Myanmar and sets out a three-phase roadmap for the revolution and beyond listed in the following:

1. Interim Period: This phase covers the period from the start of the revolution in February 2021 until the military's eventual defeat. During this time, revolutionary groups such as NUG, EROs, and ethnic federal councils must prepare for governance and transitional arrangements.
2. Transitional Period: This phase will begin immediately after the fall of the military and focus on establishing a transitional government, stabilizing the country, and beginning the process of rebuilding institutions and implementing justice.
3. New Federal Union: The final phase involves the drafting and implementation of a new federal democratic constitution, with the goal of creating a stable, inclusive, and democratic Myanmar.

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<sup>13</sup> <https://knuhq.org/en/>

<sup>14</sup> <https://www.facebook.com/profile.php?id=61558259765374>

<sup>15</sup> <https://www.facebook.com/monstatefederalcouncil>

<sup>16</sup> <https://crphmyanmar.org/wp-content/uploads/2021/04/Federal-Democracy-Charter-English.pdf>

At the moment, after four years of revolution with significant progress with 95 towns<sup>17</sup>42% of the total landmass captured and controlled by revolutionary forces (Burma News International, 2025; BBC, 2024), these revolutionary groups are daring to visualize and prepare for the transitional period. They are drafting several policies, and one of them is the transitional justice policy. This transitional policy is essential for war victims, 1.3 million refugees and asylum seekers, 3.6 million IDPs, and 632.800 stateless people<sup>18</sup> who seek justice for the sacrifice they have made and the suffering they have endured.

#### **4. NUCC and the Transitional Justice Policy Drafting Process**

The NUCC plays a crucial role in the policy-making process during the revolution, particularly through its Joint Coordination Committees (JCCs), which handle various aspects of governance, including foreign affairs, humanitarian issues, and transitional justice. The JCC-Transitional Justice (JCC-TJ) was established on December 10, 2021, with 37 members, 24% of whom are women. Following the FDC's roadmap, the JCC-TJ was tasked with drafting a transitional justice policy to address the atrocities committed during the conflict and to guide the country through a post-conflict period of healing and justice.

The drafting process began in March 2022, with the JCC-TJ forming a task force that met regularly to draft the policy. The task force also consulted with local and international experts in law and human rights, as well as politicians, to ensure a robust and inclusive approach. After more than a year of deliberation, the transitional justice policy was finalized in December 2023. This policy, which aims to provide justice to war victims and facilitate the transition to a peaceful and democratic Myanmar, will be critically evaluated in this paper.

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<sup>17</sup> <https://mmpeacemonitor.org/331215/81-towns-captured-and-controlled-by-revolutionary-forces/>

<sup>18</sup> <https://reporting.unhcr.org/operational/situations/myanmar-situation>

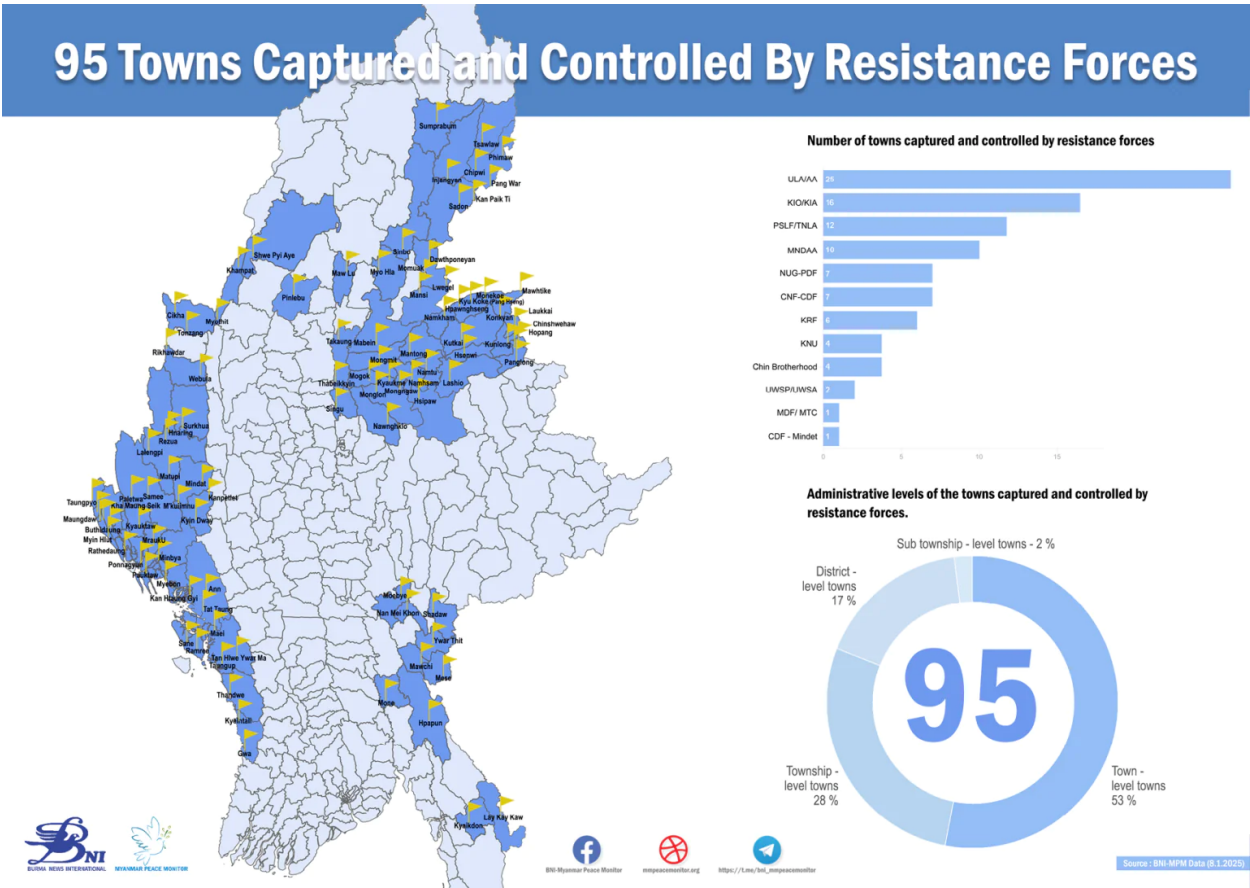


Figure 1: Map and Distribution of Towns Captured and Controlled by Resistance Forces in Myanmar (Burma News International, 2025)

## Myanmar: Who is in control where

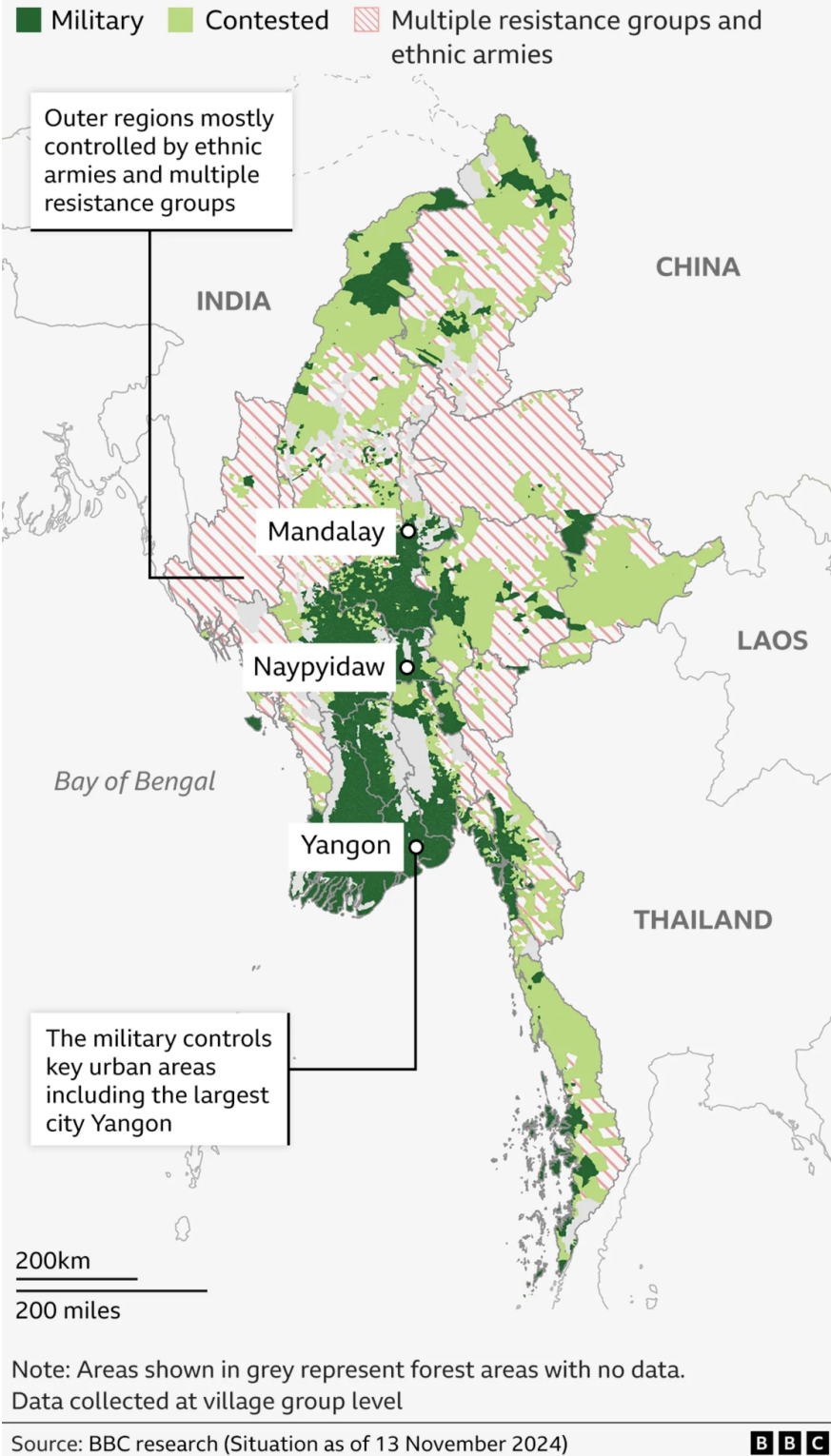


Figure 2: Myanmar: Who is in control where (BBC, 2024)<sup>19</sup>

<sup>19</sup> <https://www.bbc.com/news/articles/c390ndrny17o>

## 5. Concepts and Theories of Transitional Justice

### (A) Definition of Transitional Justice

The concept of transitional justice (TJ) has become a prominent role in academic discussions on democratization, nation-building, and state reconstruction (Kritz 1995, 2009). This concept is seen that many policymakers adopt this as a near-necessary choice to transform society and address past harms (Teitel 2010). However, transitional justice lacks a clear meaning or set of goals, and it is often expanded to include many different goals without sufficient critical reflection (Gready & Robins, 2020). Initially, it meant the legal process of dealing with human rights violations by dictatorial or repressive governments during the transition to democracy. Over time, Over time, it has slowly taken on a broader meaning (Macdonald, 2013) with the term came to refer to war crimes and serious human rights violations committed during violent conflicts (Kritz 1995; Minow 1998, 2002; Teitel 2000). Among those various definitions, the three notable definitions are presented below.

First and foremost, transitional justice scholar Ruti G. Teitel defines the term as the following:

"the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes." (Teitel, 2003, p. 69)

Moreover, the International Center for Transitional Justice (ICTJ), in the organization's paper, described transitional justice as the following

"Transitional justice refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response."<sup>20</sup>

Lastly, the United Nations (UN) not only broadly defines but also integrates the following definition as a key component of the political framework for countries that are transitioning from authoritarian rule towards democracy. The UN's definition can be seen in the following.

"[...] comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice, and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual

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<sup>20</sup> ICTJ, 'What is Transitional Justice?' <[www.ictj.org/about/transitional-justice](http://www.ictj.org/about/transitional-justice)>, accessed 9 October 2024.



prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”<sup>21</sup>

Based on this definition, the following (4) transitional justice mechanism can be noted as the following:

1. Criminal Prosecution
2. Reparations
3. Institutional Reform
4. Truth and Reconciliation

In brief, Ruti G. Teitel's definition focused on accountability for wrongdoings in the past, whereas the ICTJ specifically highlights that transitional justice is necessary where ordinary justice systems fall short, and the UN states that transitional justice needs a comprehensive and inclusive approach to serve justice and bring reconciliation. Meanwhile, the evolution of transitional justice can be understood through three distinct phases, each marked by a shift in approaches to addressing past abuses.

### **(B) Phases of Transitional Justice**

1. First Phase (1920—Holocaust Trials): This phase began with the German Supreme Court's actions in Leipzig in 1920, marking an early emphasis on accountability and punishment. It reached a significant milestone with the Holocaust trials, which demonstrated a commitment to holding individuals accountable for severe human rights violations (Mihai, 2010). This stage is indicative of an early retributive approach to transitional justice, in which criminal prosecutions and punishment were the main focus. The objective was to establish a sense of justice by prosecuting those responsible for egregious crimes, reinforcing a shift from collective to individual accountability.

2. Second Phase (late 1970s—early 1990s): Following the political transformations after the Soviet Union's collapse, this phase saw a diversification in transitional justice approaches. Mechanisms such as criminal prosecutions, amnesties, lustration, reparations, and especially truth commissions became more prominent (Buckley-Zistel, 2009; Mihai, 2010). This era aligns with a mixed and contextualized approach, characterized by a balance between retributive and restorative elements. During this period, transitional justice was shaped by political compromises and the influence of power dynamics, with an expanded focus on addressing historical injustices through alternative mechanisms like reparations and truth-seeking.

3. Third Phase (1993 Onwards): This phase introduced institutionalized international criminal justice with the establishment of the tribunals for Yugoslavia (1993) and Rwanda (1994), and later

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<sup>21</sup> UNSC (23 August 2004) S/2004/616 (n 3) para 8. ICTJ,

the creation of the International Criminal Court (ICC)<sup>22</sup> through the Rome Statute in 1998. This development reflected a commitment to global accountability (Buckley-Zistel, 2009; Mihai, 2010). This period represents a comprehensive and holistic approach, which includes a range of judicial and non-judicial measures such as institutional reforms, truth-seeking, and reparations. Acknowledging the need for accountability and reconciliation, this phase focuses on addressing the root causes of conflicts and facilitating societal healing.

In conclusion, these phases and stages of development indicate a transition from a limited, punitive approach to a more comprehensive model that integrates restorative components and extensive institutional reforms. This progression illustrates how transitional justice has evolved to meet the intricate requirements of communities experiencing political changes, with a growing focus on reconciliation and the advancement of enduring peace and stability. Victims of war, crime, and genocide in nations such as Myanmar can benefit from this evolution and progression, as the third stage offers greater guarantees for human dignity and reconciliation.

### **(C) Types of Transitional Justice**

Concerning the categories of transitional justice, there are two primary types: retributive justice and restorative justice. The initial category, retributive justice, pertains to the criminal justice system that emphasizes punishment for transgressors. This methodology is grounded in the right to justice, which encompasses the obligations to investigate, prosecute, and penalize culpable offenders (Teitel, 2000). This kind is regarded as backward-looking, as it primarily emphasizes prosecuting perpetrators of significant crimes against humanity, rectifying past injustices, and combating a culture of impunity to facilitate justice (Eisikovits, 2013; Okimoto, Wenzel, & Feather, 2012).

Conversely, Alexander Boraine (a former member of the South African TRC and founder of the International Center for Transitional Justice, ICTJ) has advanced the development of this approach by proposing that retributive justice should be complemented by restorative justice to make it holistic. According to Alexander Boraine, restorative justice has five basic pillars, including accountability, truth-seeking, reparations, institutional reform, and reconciliation (Boraine 2006, 19-25). This type of justice is viewed as a more comprehensive approach as it seeks to rehabilitate the connections between victims and offenders and attain peace. This paradigm of justice has been used in diverse situations, including post-apartheid South Africa (Eisikovits, 2013; Okimoto, Wenzel & Feather, 2012).

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<sup>22</sup> Since 2019, the ICC has been investigating alleged international crimes in Myanmar. <https://www.icc-cpi.int/victims/bangladesh-myanmar#:~:text=The%20ICC%20is%20the%20first,against%20one%20or%20more%20suspects>.

In short, retributive justice focuses on punishing perpetrators, ensuring accountability and prohibiting future crimes, while restorative justice focuses on healing and reconciliation in society by uncovering the truth and addressing the needs of victims (Amstutz, 2005, pp. 21-24; Hazan, 2006, p. 20).

Although being two distinct forms of justice, the implementation of transitional justice in a country like Myanmar, characterized by multiple ethnicities and a protracted history of armed conflict, necessitates the use of both approaches for a comprehensive and effective resolution. Firstly, there must be prosecution and penalties for criminals to serve justice and disrupt this vicious circle of injustices. Nonetheless, a healing process is essential for all individuals, necessitating reconciliation, peace, and the restoration of equitable and just relationships between victims and perpetrators. The two forms of justice must coexist and are harmonious.

In addition to the retributive and restorative types of justice, the International Center for Transitional Justice (ICTJ) employs a "gender lens" in its transitional justice approach, integrating it with other elements of the TJ, such as truth commissions, reparations, and security system reform. Feminist research has had a growing influence on transitional justice, particularly in addressing gender-based violence and advocating for reform (Pankhurst, 2008). Consequently, gender-based violence in armed conflict has been recognized as a war crime, resulting in successful prosecutions and courtroom reforms aimed at preventing the re-traumatization of survivors (Bell & O'Rourke, 2007).

Furthermore, truth commissions have adopted gender-sensitive mandates, as evidenced by their work in Haiti, Sierra Leone, and East Timor, where gender-based violence was explicitly addressed. Bell and O'Rourke (2007) emphasize that the mechanisms of the TJ should contribute to the material and political empowerment of women, rather than reinforcing pre-war gender hierarchies. The ICTJ also advocates for the inclusion of women in the design of the TJ and for gender-sensitive compensation (ICTJ, 2004). This "gender lens" should be applied in the context of Myanmar, where women were among the most disadvantaged groups in society during armed conflict. The military used gang rape, torture, and violence against women as weapons in their counter-revolution.

#### **(D) Transitional Justice Approaches**

Meanwhile, in terms of adopting this transitional justice, due to differing views and reasons, different scholars proposed adopting three different approaches. The three prevailing approaches to transitional justice—realism, constructivism, and holism—provide distinct viewpoints on how society ought to confront historical injustices and the anticipated results of their endeavors:

The initial approach, that of realism, emphasizes the limitations and constraints inherent in the political process that cannot be addressed by the capacity of transitional justice mechanisms. This

may result in a lack of positive outcomes for society. Those with a realist perspective emphasize the role of external factors, such as dominant interests, which could potentially facilitate positive outcomes. However, they contend that democratic transitions may impose constraints that are "absolutely unfeasible" for achieving such positive change.

The realists, such as Snyder and Vinjamuri (2003, p. 5), posit that human rights prosecution may inadvertently contribute to the perpetration of atrocities rather than preventing them, due to a lack of sufficient acknowledgement of the political realities involved. Consequently, the realist approach, in contrast, recognises the potential of amnesties to mitigate any subsequent backlash (Snyder and Vinjamuri 2003; Goldsmith and Posner 2005).

The constructivist approach, which is the second of the three perspectives, places a premium on international values, norms, and accountability. It also emphasizes the role of human rights activists in pressuring their respective governments to comply with these norms in order to achieve transitional justice. The constructivist perspective asserts that prosecution plays a pivotal role in preventing cycles of impunity. Those who adhere to the constructivist approach contend that prosecution is a crucial instrument for establishing the rule of law and democratic institutions. They present empirical evidence indicating that criminal prosecutions are associated with a reduction in violations of physical integrity rights (Sikkink and Walling 2007; Kim and Sikkink 2010; Sikkink 2011).

The holism approach attempts to synthesize the tenets of realism and constructivism, thereby establishing a middle ground between the two. Holistic scholars posit that the combination of trials and amnesties in a complementary manner can enhance human rights and democratic outcomes. This is conceptualized as "justice balance" (Olsen, Payne, and Reiter 2010, 147–48). In light of the aforementioned, this approach suggests that bargaining and criminal prosecutions are parallel processes that can be mutually reinforcing. It is of the utmost importance to consider the role of amnesties in achieving political stability while promoting accountability, particularly in specific political contexts where such an approach may be necessary.

In summary, these methodologies underscore distinct trajectories within transitional justice: realism accentuates pragmatic stability, constructivism stresses normative accountability, and holism endeavors to integrate both to address intricate transitional contexts. In the context of Myanmar, it can be assumed that some people who are not actively involved in the revolution seem to support the first approach; many revolutionary people are consistently seeking the second constructivist approach. However, to be realistic while preserving accountability, the third approach can help solve the transitional justice phase in the post-revolution period.

## **(E) 'Dark Side' of Transitional Justice**

Transitional justice is typically perceived positively, however individuals often overlook its inadequacies. In the context of transitional justice in seven Latin American countries—Argentina, Brazil, Chile, Uruguay, Mexico, El Salvador, and Guatemala—Encarnación (2022) postulated and delineated the 'dark side' of transitional justice, which encompasses various unintended consequences and limitations. Encarnación (2022) examined the aforementioned 'evil side' as follows;

(1) Impractical Anticipations: Transitional justice frequently generates elevated expectations among researchers, activists, and policymakers regarding its capacity to eliminate violence, diminish human rights violations, and enhance democracy. Nevertheless, such expectations may be unrealistic and result in dissatisfaction and disillusionment when unfulfilled.

(2) Intensifying Social Conflict: Political prosecutions and truth commissions may occasionally intensify social conflict instead of alleviating it. The oscillation between justice and amnesty in Argentina has fostered an adversarial culture, potentially obstructing reconciliation and the consolidation of democracy.

(3) Frustration and Disillusionment: Numerous truth commissions have resulted in a legacy of frustration and disillusionment. For instance, Guatemala's truth commission, despite its comprehensive endeavors, achieved minimal advancement regarding its principal recommendations, and the stark reality of life for the majority of inhabitants persisted unaltered.

(4) Impact on democratic culture: The human rights movement in Argentina has at times introduced undemocratic tendencies into the political culture, despite fostering strong civic engagement. This suggests that the process of transitional justice can have complicated and not always beneficial consequences for the political landscape.

(5) Memorization and moving on: The significant efforts to remember history in Latin America, especially in Argentina, have raised concerns about whether this emphasis on the past is hindering the region's ability to overcome historical traumas and move forward. Critics argue that the constant remembrance of historical tragedies can become a political obsession that impedes peace and healing.

In conclusion, while transitional justice seeks to address historical atrocities and build a democratic future, it has a dark side with unattainable goals and impractical expectations, the intensification of social conflicts, dissatisfaction with truth commissions, complex effects on democratic culture, and difficulties associated with memorialization. The author's findings are indeed valuable for

Myanmar, as these issues highlight the need for a balanced and realistic approach to transitional justice.

#### (F) Success and Failures of Transitional Justice

David Backer (2009) identified the TJ mechanisms used throughout Latin America, Europe, Africa, and Asia by examining 58 cross-national comparative studies. This research used various techniques, from case studies and discourse analysis to extensive statistical analyses, primarily emphasizing legal mechanisms, their application, and adherence to human rights and international law (Backer, 2009). However, few research studies have looked into cultural variables such as social discourses and national narratives, leaving a gap in understanding how TJ influences individual and group attitudes and behaviors. Much existing knowledge is founded on "assumptions and anecdotal evidence," leading to subjective and ideological discussions rather than empirically informed conclusions (Backer, 2009, p. 67).

Oskar Thoms, James Ron, and Roland Paris (2008) highlight a lack of empirical evidence to support firm conclusions on the systematic impacts of TJ processes. They contend that there is insufficient data to determine whether TJ promotes psychological healing, human rights respect, reconciliation, or democratic governance. According to Thoms et al. (2008), no proof supports statements that TJ defeats these goals. This ambiguity emphasizes the importance of doing more thorough, cross-national investigations to better understand the conditions for TJ mechanisms' success or failure.

##### (a) Successes in Transitional Justice

Argentina's approach to transitional justice, which included legal prosecutions, truth commissions, and reparations, is primarily regarded as one of its most successful. While forensic anthropology methods created in Argentina have subsequently been used worldwide, the Trial of the Juntas (1985) and the creation of the National Commission on the Disappeared (CONADEP) established a precedent for accountability (Encarnacion, 2022). Another instance of a restorative justice paradigm addressing apartheid crimes while balancing accountability and reconciliation is the Truth and Reconciliation Commission (TRC) in South Africa (Hazan, 2007). Rwanda's Gacaca courts established a regionally tailored methodology for processing a large number of genocide cases through a community-based judicial system (Freeman, 2000).

Civil society organizations (CSOs) have also played a critical role in promoting transitional justice. Research has shown that strong civil society involvement is linked to more successful TJ procedures. For example, In Latin America, CSOs pressured governments to admit past crimes and put justice mechanisms in place (Backer, 2003). The Truth and Reconciliation Commission (SLTRC) and the Special Court for Sierra Leone (SCSL) were significant in Sierra Leone for



having gender-sensitive mandates that addressed sexual abuse as a war crime (King, 2006; Nowrojee, 2005).

#### (b) Challenges and Failures in Transitional Justice

In spite of these achievements, many TJ procedures still face significant challenges. One major problem is the lack of empirical data regarding the long-term effects of TJ mechanisms. Although supporters assert that TJ promotes democracy and reconciliation, researchers argue that insufficient evidence supports these claims (Thoms et al., 2008). Furthermore, political opposition, inadequate court systems, and insufficient truth-seeking procedures are frequently the causes of transitional justice failures.

For instance, establishing the National Truth Commission in Brazil postponed the transitional justice process until 2011. Brazil's 1979 Amnesty Law significantly reduced accountability by protecting offenders from prosecution, unlike Argentina (Encarnacion, 2022). Similarly, political amnesties hindered the pursuit of justice in Chile and Uruguay, with the Valech Commission in Chile and the Expiry Law in Uruguay (Backer, 2009). Due mainly to a lack of political will and judicial ability, Timor-Leste's ad hoc tribunal could not bring high-ranking offenders to justice (Cohen, 2002; Reiger & Wierda, 2006).

Cambodia's transitional justice after the Khmer Rouge (1975-1979) was marred by political manipulation, lack of accountability for senior perpetrators, and inadequate reparations and documentation for victims, leading to low levels of trust and participation (Ainley, 2014; Manning et al., 20-23; Etcheson, 2014). Similarly, transitional justice in Nepal after the 1996-2006 civil war faced delays, political interference, and widespread amnesties that undermined accountability and effectiveness (Bhandari, 2015; Advocacy Forum & Human Rights Watch, 2020).

#### (c ) The role of Timing:

Another important element affecting TJ outcomes is timing. Some academics argue that implementation must happen immediately to prevent impunity and strengthen democratic transitions, while others contend that delaying strategies promote more substantial institutional stability (Freeman, 2000). The Ghanaian Dagbon conflict provides an example of the complexity of Timing; transitional justice initiatives, such as the Wuaku Commission, were put into place shortly after the violence but failed because of poor coordination and political interference (Lambongang, 2017).

#### (d) The Role of International and Local Actors:

International participation in transitional justice can be helpful and troublesome. To strike a balance between local ownership and international legal standards, hybrid tribunals—like the Extraordinary Chambers in the Courts of Cambodia (ECCC)—had to contend with slow proceedings and government meddling (Mutua, 2008). International organizations can offer financial support and knowledge, but top-down interventions can also weaken the local agencies, as seen by Iraq's de-Ba'athification process, which exacerbated existing instability (Sunga, 2006).

(e) Contextual Factors:

The local environment, which includes political will, institutional ability, and cultural norms, is critical to the success of TJ. In Sierra Leone, the Truth and Reconciliation Commission (SLTRC) and the Special Court for Sierra Leone (SCSL) had explicit gender-focused mandates, which contributed to greater gender inclusion than in Timor Leste, where cultural norms and a lack of political will restricted progress (King, 2006, p. 258; Nowrojee, 2005, p. 96). Similarly, Rwanda's Gacaca Courts, which included local people in the justice process, processed many cases but were chastised for probable biases and a lack of due process (p. 186).

In reviewing the failures and successes of transitional justice mechanisms, Myanmar should be cautious about its post-conflict transitional justice mechanisms because there are many possibilities that a single party could dominate the entire TJ process and abuse its political authority to justify its atrocities and crimes and avoid transitional justice measures for itself. Moreover, since there are many types of perpetrators: high, middle and low level perpetrators as seen in Myanmar, it is crucial to formulate and design specific transitional justice mechanisms for each type to hold them accountable for their human rights violations and terror. At the same time, it is also important to design them on a victim-centered basis to seek justice for all victims and ethnic majorities and minorities, as well as to rebuild trust and reconciliation at the national and community levels. TJ activities must be tailored to specific circumstances, emphasizing a balance between retributive and restorative approaches, maintaining strong institutional frameworks, and encouraging genuine civil society engagement.

**(G) No 'One-Size-Fits-All'**

Examining the theoretical frameworks, classifications, approaches, and implementations of transitional justice in the global setting helps one to see the lack of a generally applicable paradigm. Constant evolution and improvement define these systems. Consequently, it is important to avoid oversimplification by means of template application. The effectiveness of a specific strategy in one situation could be rendered moot or maybe negative in another. Every method must be painstakingly adapted to fit the unique political, cultural, and historical background of its particular culture. Comparative research in many areas supports this claim (Encarnacion, 2022).

Argentina has been praised in the framework of Latin America for its innovative approach, which includes the founding of CONADEP and the Trial of the Juntas. The progress this project has made in forensic anthropology to identify the vanished has been praised. Brazil, on the other hand, postponed major actions until 2011 when its National Truth Commission revealed involvement of civil society in past atrocities. As shown by the Chilean Valech Commission and the Uruguayan Expiry Law, Chile and Uruguay also faced challenges in attaining responsibility resulting from political amnesties. Similar complexity has been noted outside of the Latin American setting. For example, whereas Rwanda's Gacaca courts emphasized community-driven responsibility, South Africa's Truth and Reconciliation Commission gave restorative justice first priority. These illustrations highlight the need of transitional justice sensitive to context, flexible, and responsive to the particular difficulties of every culture. Real reconciliation and enduring peace depend on such a strategy.

Therefore, when assessing, contemplating, and examining the transitional justice policy of Myanmar, it is imperative to consider the local context, history, and political environment of the country, rather than adhering to a single international format.

## **6. The Process and Structure of Myanmar's Transition Justice Policy**

As previously stated, the Joint Coordination Committee-Transitional Justice (JCC-TJ) drafted the transitional justice policy, which the NUCC approved. Beginning in March 2022, the drafting process lasted until December 2023. The completion and ratification of this took over 23 months. There are 37 members of the JCC-TJ, with 76% of them being men and 24% being women. For a practical reason to finish drafting this policy, the JCC-TJ established a task force group and assigned this drafting task.

In order to prevent policy conflicts, this task force group also works with other JCCs. For instance, in order to prevent conflicts between the CDM policy and the JCC-CDM group, the task force must confer with both before including any articles pertaining to non-CDMs. Additionally, they conferred with the JCC-Humanitarian Assistance and the JCC-Education. The task force team also invites lawyers, technicians, and legal specialists from both domestic and foreign jurisdictions.

In terms of the policy's structure, it is evident that it is methodically divided into three stages, which are the federal democracy period, transitional period, and interim period, in accordance with the political roadmap outlined in the federal democracy charter. The intermediate phase, during which the nation is still experiencing war and strife, consists of twelve activities. Following the conclusion of the conflict, 17 activities must be completed during the transition period.

According to this TJ policy, 30 activities will take place throughout the federal democratic period, which is a time when the nation is stable and runs in line with the federal democratic constitution. This third phase, which consists of thirty actions, is divided into four processes in accordance with the Transitional Justice framework: truth-seeking, prosecution, reparations, and institutional reforms. This policy will be critically analysed in the following using the SWOT analysis based on the theoretical guideline of transitional justice.

#### **The 4 Window Mechanisms of Transitional Justice**

1. Finding truth/Seeking the Truth	2. Justice	3. Reparation	4. Institutional Reforms/Non-Recurrence	5. Other process to be performed
<p>1. For the formation of the Truth and Reconciliation Commission, draft policies and approve laws (laws that were drafted), establish the commission, and by-laws/procedures.</p> <p>2. Continuously monitoring and documenting human rights violations</p> <p>3. Digging out human rights violations from the past and their root causes, reporting and documenting them.</p> <p>4. Conducting vetting processes</p>	<p>1. Identifying and developing justice process and amnesty procedures</p> <p>2. Conducting public hearings.</p> <p>3. Signing international treaties that are required for the punishment of perpetrators in the international judicial mechanisms and prosecuting them before those mechanisms.</p> <p>4. Prosecution of perpetrators in domestic courts, hybrid courts, local courts, and special tribunals.</p> <p>5. The findings and decisions of the international courts and UN investigative mission should be included or incorporated into justice processes.</p>	<p>1. Building Museum</p> <p>2. Symbolic Reparation</p> <p>3. Material Reparation</p> <p>4. Psychological rehabilitation</p> <p>5. Compensation</p> <p>6. Restitution of property illegally seized, stolen, or plundered by an authority (or organization) to the original owners who suffered loss.</p> <p>7. Rehabilitation (social, educational, professional, etc)</p> <p>8. Recall and resettlement of internally displaced persons.</p> <p>9. Refugees repatriation, resettlement, and re-refugee.</p> <p>10. Allowing people who have lived abroad due to various circumstances to reapply for citizenship.</p>	<p>1. Constitution and laws;</p> <p>2. Security Sector Reform</p> <p>3. Judicial Reform</p> <p>4. Reformation of educational institutions</p> <p>5. Reformation of economic system</p> <p>6. Reformation of other organizational sectors</p>	<p>1. Establish mechanism for public communication</p> <p>2. Organizing campaigns for political awareness and mobilization trainings on transitional justice</p> <p>3. Making perpetrators responsible and accountable for their perpetration and in this way, building trust and reconciliation in society</p> <p>4. Building a database system to systematically record human rights violations nationwide.</p> <p>5. Doing research that is helpful for effective implementation of transitional justice processes</p>

## 7. Analysis of the Transitional Justice Policy: The SWOT Analysis

As mentioned earlier, the TJ policy is examined and critically analyzed in this section using the SWOT analysis method. The discussion of this policy's advantages and disadvantages will be followed by an examination of the chances and risks present in actual politics that may have an effect on the application of the TJ policy.

First, there are three key points to consider regarding the strengths: one is the procedure, and the other three are the substance. This policy is among the most commonly adopted through a consensus approach because it was conceived and prepared in the JCC-TJ, presented to the NUCC, and approved by the People's Assembly. Since such a consensus-based policy ratification procedure is difficult and tough in Myanmar during an arm-revolution, revolutionary groups, strike groups, and ethnic groups must recognize this process<sup>23</sup>. It is imperative that ethnic groups, strike groups, and revolutionary groups understand how hard it is to reach an agreement on policy ratification in Myanmar during an armed revolution.

The second strength shows that this policy is a well-organized and globally standardized framework, as it aligns with the three stages of Myanmar's revolutionary roadmap and incorporates the UN's transitional justice mechanism, which includes four windows of transitional justice. This framework integrates both retributive and restorative justice (TJ, Chapter 4, Article 28-32). The third notable strength is the incorporation of gender equality within both the process and the content. In drafting the policy, women's participation is observed at 24%, which, while slightly below the standard of 30%, may still be regarded as a strength within Myanmar's local context. Nonetheless, the policy ensures that women comprise 30% of the decision-making body at all levels, representing a significant achievement (TJ, Chapter 2, Article 26, No. 5).

This policy's final strength lies in its holistic approach, integrating elements of realism and constructivism. This policy ensures that there is no amnesty for genocide, crimes against humanity, and war crimes, as stated in Article 15, in order to uphold established norms and values. This article seeks to uphold accountability, norms, and values. However, the policy serves as a framework for other perpetrators by incorporating "conditional amnesty" aimed at individuals who committed human rights abuses but subsequently confessed and addressed the victims' losses. The policy explicitly indicates that conditional amnesty does not equate to immunity (Chapter 3, article 11; Chapter 5, article 36).

Additionally, certain drawbacks and weaknesses should be acknowledged. Initially, while striving to implement a holistic approach, it is essential to maintain accountability for the prosecution of genocide and war crime perpetrators, with no provision for amnesty. However, a specific time frame for this process has not been established. Consequently, individuals may begin to tally and assess events from various starting points, such as 1948, 1988 (the 8888 Revolution), 2007 (the

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<sup>23</sup> Thirty political institutions have joined as members of the NUCC



Saffron Revolution), or 2021 (the Spring Revolution). The absence of this clause, while potentially beneficial in preventing political deadlock among revolutionary groups, represents a weakness and a gap in this policy, as a time will inevitably arise for discussion on this matter.

A further limitation is that, despite the policy's drafting taking 23 months and encompassing all four windows of the transitional justice mechanism, there remain over 10 subsets of policies<sup>24</sup> that must be integrated into this framework. This policy may also be regarded as the introductory component of the entire TJ policy. If the JCC-TJ fails to adhere to this initial stage of policy, it will be increasingly difficult to incorporate subsequent elements in the future.

This policy could serve as a unifying element for all components of the union and its ethnicity in the context of external opportunities in actual politics<sup>25</sup>. This policy will instill hope and trust among ethnic war victims that justice may be attained in the future. The success would ensure the cohesion of sub-units or ethnic groups inside the nation. Myanmar has the potential to benefit from the advantages of latecomers, given the lessons learned during all three periods of transitional justice in world history and the means available to obtain assistance from the international community. Since the establishment of the International Criminal Court (ICC) by the Rome Statute in 1998, Myanmar is presently in the third phase of transitional justice. The UN's Independent Investigative Mechanism for Myanmar (IIMM)<sup>26</sup>, which methodically gathers data on human rights abuses, will significantly assist Myanmar in the future. The availability of lessons, experiences, tools, and skills can empower Myanmar to maintain a holistic approach and mitigate damage.

Ultimately, despite this policy being one of the consensus outcomes, there exists inadequate and ineffective institutionalization in Myanmar. Consequently, it is concerning that the nation possesses sufficient and dependable institutions to execute such a policy. Nonetheless, Myanmar exhibits a culture of "individual veneration" or "personal worship" rather than a focus on collectivism or organizations. Consequently, Daw Aung San Suu Kyi, who was being arrested during the formulation and ratification of this policy, may lack a comprehensive understanding of the backdrop. If she makes an unplanned decision on the NUG, the current institution may not oppose her influence and power. A survey. In 2024, 2,892 participants from 233 townships participated in a public survey<sup>27</sup>. With 31% of respondents saying they had a great deal of faith in Daw Aung San Suu Kyi and 49% saying they had a reasonable amount, Daw Aung San Suu Kyi scored the highest score when questioned about the degree of confidence people in Myanmar had in political organizations, government offices and positions, and leaders. With 37% of respondents having a great deal of trust and 36% having a decent amount, the NUG's People's Defence Force

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<sup>24</sup> truth seeking, victim-centered process, prosecution and punishment, conditional amnesty, reparation, psychological support, institutional reform, vetting process, reconciliation, defector

<sup>25</sup> <https://www.geopoliticalmonitor.com/backgrounder-ethnic-armies-in-the-myanmar-civil-war/>

<sup>26</sup> <https://iimm.un.org>

<sup>27</sup> <https://blueshirtinitiative.org/en/polls/1>

is the second most trusted institution (Blue Shirt Initiative 2024, 41). In Myanmar, Daw Aung San Suu Kyi has a huge and lasting impact on the populace. Therefore, if she disagrees, this policy might eventually simply be a paper.

The diminished trust between the populace and leaders is also alarming. In politics and policy implementation, trust is paramount; without mutual trust, the establishment of national trust is unattainable. In Myanmar's revolutionary politics, the presence of 'partner conflict'<sup>28</sup> and 'rival/enemy conflict' has been noted by various individuals. Partner conflict denotes discord and disagreement within revolutionary factions, whereas rival/enemy conflict signifies discord between a revolutionary organization and the military, specifically the SAC.

To elaborate further, it is already evident that the majority of armed organisations and revolutionary groups are engaged in combat against the military, SAC. It is therefore unnecessary to provide an explanation of the nature of the conflict between the rival parties. With regard to the conflict between partners, it is notable that one of the most prominent and influential ethnic resistance groups, the Kachin Independent Army (KIA), has not joined the National Unity Government (NUG) and the National Unity Conference (NUCC), despite engaging in some degree of coordination with the NUG. Additionally, the Kachin Political Interim Coordination Team (KPICT) has also withdrawn from the NUCC<sup>29</sup>, as has the National League for Democracy (NLD), which is the most popular political party.

Meanwhile, the Three Brotherhood (also known as the Brotherhood Alliance)<sup>30</sup>, an alliance between the Arakan Army (AA), the Myanmar National Democratic Alliance Army (MNDAA), and the Ta'ang National Liberation Army (TNLA) that was formed in 2019, has not entered into any official agreement or coalition with the NUG. Following considerable pressure from the Chinese government, the Three Brotherhood ceased the majority of their operations. Furthermore, the MNDAA has publicly declared<sup>31</sup> its intention to refrain from engaging in any form of military or political cooperation with the NUG. These examples collectively indicate the existence of conflict between parties identified as allies or partners, despite their shared opposition to the military. The existence of disagreements among allies and friends results in a political impasse,

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<sup>28</sup> "Because it is a nationwide revolution, there will be partner conflicts. We need to negotiate and find a solution." Naw Sae Sae (NUCC). <https://bur.mizzima.com/2024/04/06/19651>

<sup>29</sup> <https://cnimyanmar.com/index.php/english-edition/7551-withdrawal-of-kpict-from-nucc-undermines-spring-revolution-analyst>"Because

<sup>30</sup> It is worthy of note that the Three Brotherhood's 1027 operation, a surprise offensive, is regarded as the most challenging period for the military regime since the early days of the coup. In the space of less than two months in 2023, they captured over 220 positions held by the military junta. Furthermore, in 2024, they proceeded to capture several major cities. <https://www.frontiermyanmar.net/en/we-will-win-northern-alliance-doubles-down/>

<sup>31</sup> <https://myanmar-now.org/en/news/mndaa-distances-itself-from-nug-as-it-announces-end-to-offensive-amid-chinese-pressure/lt>

significantly hindering progress <sup>32</sup> . If the partners/friends cannot reach a consensus, the implementation on the ground becomes exceedingly difficult. Consequently, the low degree of confidence among partners or friends will significantly affect the implementation of this policy.

## **The SWOT Analysis of Transitional Justice Policy**

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<sup>32</sup> <https://www.frontiermyanmar.net/en/fresh-dialogue-needed-for-myanmars-fractured-resistance/>

Strengths (Policy substance)	Weaknesses (Policy substance)	Opportunities (Actual Politics)	Threats (Actual Politics)
<p>- <i>Well-Designed Policy</i>: Ensuring adherence to international standards encompassing both retributive and restorative justice.</p> <p>- <i>Consensus Process</i>: initiating process from JCC-TJ to the NUCC body and ratified in the People's Assembly.</p> <p>- <i>Inclusion of Guiding Principles</i>: (30% of women's participation in decision-making, rejecting amnesty for indecision-making, war crimes and genocide. )</p>	<p>- <i>Timeframe Issue</i>: The absence of a defined timeframe for monitoring the crimes committed in the years 1948, 1988, 2007, and 2021</p> <p>- <i>Being Initial Framework</i>: Subsets of policies still need to be developed (Ten?).</p> <p>- <i>Overly Idealistic Approach</i>: Aligning with international practices is ambitious, but weak and dysfunctional political institutions in Myanmar with "individual veneration" culture.</p>	<p>- <i>Opportunity to Maintain Union</i>: Success would result in the sub-units or ethnic groups remaining unified within the nation.</p> <p>- <i>Advantages for Latecomers</i>: The presence of lessons, tools, experts, and mechanisms available to secure aid from the international community.</p> <p>- <i>Active CSOs Participation</i> : Unions, women, and youth organizations active participation in public affairs will be crucial in facilitating the implementation of transitional justice.</p>	<p>- <i>Inadequate Institutionalization</i>: The general populace tends to idolize heroes rather than adhering to established rules, regulations, and laws.</p> <p>- <i>Low Level of Trust</i>: The presence of conflicts among friends/partners and enemies, even a political deadlock among partners, causes significant delays in progress.</p> <p>- <i>Large Number of Victims</i>: Ensuring victim participation is vital for truth-seeking, but managing Myanmar's vast number of victims poses a major challenge.</p> <p>- <i>Neighboring Countries' Influence</i>: Limited support from India and China could obstruct Myanmar's transitional justice efforts.</p>

## 8. Conclusion

In his study, Fischer (2010) posits the importance of formulating policies that are grounded in a thorough comprehension of the interconnections among various mechanisms, levels, and stakeholders. The SWOT analysis of the TJ policy in this paper is crucial for identifying the linkages and connections among stakeholders that could influence policy change in Myanmar. Fischer underscores the imperative for practice-oriented research that produces concrete policy suggestions capable of effective implementation. It is imperative to avoid the creation of blueprints that merely satisfy the desire of policymakers for a universally applicable "winning formula" (Thoms et al., 2008, p. 17). Consequently, this paper will conclude with answers to the research questions and present policy recommendations based on practical applications. These recommendations are intended to ensure the effective execution of the transitional strategy in Myanmar.

This transitional justice policy represents a significant advancement for the revolutionary groups, demonstrating their capacity for comprehensive planning and institutional preparedness at each political phase. This policy also aids in regulating the various defense and ethnic armed organizations to respond more cohesively to the military dictator's atrocities. This policy will not serve as the definitive guideline for all political stakeholders in Myanmar; nonetheless, it may serve as a reference for many, given it emerged from an inclusive process.

One of the international community's concerns regarding Myanmar is the potential 'power vacuum' that may arise following the collapse of the military regime. This issue is both evident and concerning (Bhatia, 2003; Malhotra, 2023; The Economist, 2024; Thompson, 2023). While this policy may not completely address the potential gap, it can nonetheless assist in imposing order, harmony, and cohesive action within this potential power vacuum context.

The policy employs a holistic approach that incorporates components of both retributive and restorative justice. This would assure war victims that their suffering will not be in vain, as it entails the prosecution of genocide criminals, while conditional amnesty for certain offenders following legal prosecution and a national apology may facilitate national reconciliation and healing within the country. The absence of a defined timeframe (starting from 1948/88/2007/2021) for monitoring the crimes committed could indeed provoke further conflict in the future. The subset of ten policies concerning criminal prosecution, reparations, institutional change, and truth and reconciliation must be formulated and ratified to establish reliable institutional arrangements for the transitional justice process.

The adage "Easier said than done" underscores that the possibility of executing this program presents significant obstacles for the government. A nation with a robust culture of "personal worship" must be duly recognized. Leaders of ethnic groups, revolutionary factions, and political entities must recognize that national interests should take precedence above personal egos and organizational agendas, as the consequences of loss and suffering in this revolution, including

instances of genocide, are grave, significant, and historically consequential. The question of "trust" among revolutionary factions is likewise a concerning matter. Only through confidence among partners and comrades can this strategy be effectively implemented by diligently seeking solutions to such issues. The prevailing political realities may hinder its implementation. In a nation marked by profound cultural divisions, splintered political factions, and eroded social capital and trust, it is concerning that external political constraints may outweigh the benefits and opportunities offered by this policy.

Before addressing specific measures to be taken to ensure the successful implementation of this policy, it is essential to acknowledge that Myanmar has never successfully undergone a proper stage of nation-building or state-building. Consequently, political negotiation, identity formation, and shared culture remain inadequately agreed upon and established even before the Spring Revolution. Unresolved inquiries, ongoing disputes, and an ambiguous national identity persisted, with numerous ethnic groups armed for self-determination and equality. A thorough study of historical contexts reveals that the intricate and contentious ethnic dimensions were never fully resolved even prior to the Spring Revolution. Consequently, there is no immediate resolution for the conflict in Myanmar, and the latest disagreements and disputes are not solely attributable to the Spring Revolution but are instead a culmination of historical factors.

Primarily, understanding of this newly issued policy must be heightened and disseminated. Increased public campaigns and understanding of this policy are necessary through various social media platforms and discussions. Secondly, the revolution in Myanmar is ongoing; thus, comprehensive and systematic documenting of human rights breaches must be ensured, as reliance solely on the Independent Investigative Mechanism for Myanmar (IIMM) is insufficient for the nation. The JCC-TJ must maintain close contact with the Ministry of Human Rights (MOHR) of the NUG. The international community must provide technical and financial support for this type of collaboration. Members of the NUCC must also reach out to other revolutionary factions outside the NUCC umbrella to work on this policy together and concentrate on the awareness process regarding it.

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## **Appendix A**

### **Phases of Transitional Justice Table of Transitional Justice Phases and Action Plan**

Phase (1)	Phase (2)	Phase (3)
<b>Interim Period</b>	<b>Transitional Period</b>	<b>Federal Democracy Period</b>
<i>Things needed to prepare in advance during the conflict and war</i>	<i>Things needed to do immediately after the conflict</i>	<i>Things needed to do when the country is stable and administered in accordance with the new constitution.</i>
<ul style="list-style-type: none"> <li>• Developing framework for transitional justice and relevant policies (draft), and approval.</li> <li>• Adding transitional justice processes into transitional arrangement.</li> <li>• Collecting facts and evidences for establishing truth and reconciliation commission, drafting policies, law and procedures, and negotiation/discussion.</li> <li>• Continuous monitoring on human right violation and documentation</li> <li>• Receiving and acknowledging the defectors.</li> <li>• Promoting awareness of leaders and relevant organizations for the protection of victims and trauma healing</li> <li>• For public awareness on transitional justice, organizing campaigns and mobilizing people that are politically effective</li> <li>• Networking and collecting the necessary evidence for international and domestic proceedings.</li> <li>• Coordination and</li> </ul>	<ul style="list-style-type: none"> <li>• Re-negotiation on transitional justice policies and drafting procedures.</li> <li>• Developing policies, drafting laws and procedures in advance so that judicial matters relating to transitional justice can be implemented</li> <li>• Preparation for negotiation policy</li> <li>• Developing designs and plan for phase III (Federal Democracy Period)</li> <li>• Preparation to include provision of transitional justice in federal democracy constitution.</li> <li>• Continue to collect facts and evidences for establishing truth and reconciliation commission, renegotiation on policies, drafting law and procedures, and negotiation</li> <li>• Continuous monitoring on human right violation and documentation</li> <li>• Developing policies, mechanism, processes and procedure for justice and amnesty</li> <li>• Drafting process, policies and law (draft) related to reparation.</li> <li>• Promoting awareness of leaders and relevant organizations for the</li> </ul>	<p><i>Finding the truth, Truth-Seeking</i></p> <ul style="list-style-type: none"> <li>• Continue to collect facts and evidences for establishing truth and reconciliation commission, renegotiation on policies, drafting law and procedures, and adoption</li> <li>• Continuous monitoring on human right violation and documentation</li> <li>• Digging out human right violations from the past and their root causes, reporting and documenting them</li> <li>• Vetting processes</li> </ul> <p><i>Justice</i></p> <ul style="list-style-type: none"> <li>• Explore and drafting justice process and amnesty procedures.</li> <li>• Developing processes and procedure for justice and amnesty</li> <li>• Public hearing</li> <li>• Signing international treaties that are required for the punishment of perpetrators in the international judicial mechanisms and prosecuting them before those mechanisms.</li> <li>• Prosecution of perpetrators in domestic courts, hybrid courts, local courts, and special tribunals.</li> </ul>

<p>cooperation among respective stakeholders on transitional justice.</p> <ul style="list-style-type: none"> <li>• Obtaining recommendations from the experts in the relevant fields and organizations relating to the transitional justice policies and processes</li> <li>• Doing research that are helpful for effective implementation of transitional justice processes.</li> <li>• Building database system to systematically record human rights violations throughout the country</li> </ul>	<p>protection of victims and trauma healing</p> <ul style="list-style-type: none"> <li>• For public awareness on transitional justice, organizing campaigns and mobilizing people that are politically effective</li> <li>• In policy formulation, NUCC TJ will take leading role and make it a people-centered process by collecting facts and data related to political, social and economic hardship people are facing, and documenting them, and negotiating and approving the process, and through awareness, create people's movement.</li> <li>• Formulating policies and procedures for prosecution; to carry out international judicial activities, network with relevant organizations.</li> <li>• Coordinate with the stakeholders concerned on matters related to transitional justice.</li> <li>• To strengthen transitional justice processes, emphasize on working with the stakeholder organizations and civil societies concerned that focus on transitional justice and promote their role.</li> <li>• Building a database system to systematically record human rights violations nationwide.</li> <li>• Doing research that are helpful for effective implementation of transitional justice processes</li> </ul>	<p><i>Reparation</i></p> <ul style="list-style-type: none"> <li>• Building historical museum</li> <li>• Symbolic Reparation</li> <li>• Material Reparation</li> <li>• Psychological rehabilitation</li> <li>• Compensation</li> <li>• Restitution of property illegally seized/ stolen/ plundered by an authority (or organization) to the original owners who suffered loss.</li> <li>• Rehabilitation(social, education, professional and etc.)</li> <li>• Recall and resettlement of internally displaced persons.</li> <li>• Refugee repatriation, resettlement and rehabilitation.</li> <li>• Allowing people who have lived abroad due to various circumstances to reapply for citizenship.</li> <li>• Allowing people who have lost their citizenship due to various circumstances and those who do not have the right to citizenship to reapply for citizenship.</li> <li>• Strengthening the awareness of leaders and relevant organizations for the protection of victims and the trauma healing.</li> </ul> <p><i>Institutional Reform/Non-Recurrence</i></p> <ul style="list-style-type: none"> <li>• Constitution and laws;</li> <li>• Security Sector Reform</li> <li>• Judicial Reform</li> <li>• Educational reform</li> <li>• Economic reform</li> <li>• Other institutional sectors reform</li> </ul>
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		<p><i>Miscellaneous</i></p> <ul style="list-style-type: none"> <li>• Establish public communication mechanisms.</li> <li>• For public awareness on transitional justice, organizing campaigns and mobilizing people that are politically effective</li> <li>• making perpetrators responsible and accountable for their perpetration and in this way, building trust and reconciliation in the society</li> <li>• Building a database system to systematically record human rights violations nationwide.</li> <li>• Doing research that is helpful for effective implementation of transitional justice processes</li> </ul>
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