

Transitional Justice and the Epistemological Limits of GNR in Nepal's Constitutional Settlement

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Abstract

Guarantees of Non-Repetition (GNR) constitute the most structurally ambitious dimension of transitional justice, demanding not only accountability for past violations but the reconstruction of state institutions to prevent future conflict. Accommodative constitutional design, in which former rebels participate in constitution-making through elected assemblies, negotiated reforms, and power-sharing arrangements, has been idealized as the dominant mechanism for crafting political settlements and securing non-repetition in post-conflict societies. Nepal's transition following the 2006 Comprehensive Peace Agreement exemplifies one of the most faithful applications of this model. Through the establishment of an inclusive, secular, and federal republic, the constitutional process sought to address historical patterns of exclusion while integrating former Maoist insurgents into competitive democratic politics. That model now faces an essential reassessment following the return of coordinated, urban political violence in September 2025. This article argues that Nepal's experience exposes the institutional limitations of accommodative constitutional design as a self-sufficient GNR mechanism. Delayed transitional justice processes, the systematic subversion of institutions of accountability, and entrenched economic underdevelopment have collectively undermined the constitutional architecture. Drawing on comparative evidence from South Africa and Colombia, the article pushes the boundaries of standard institutional critique and prompts a deeper philosophical re-engagement with GNR. It demonstrates that inclusive constitution-making tends to reconfigure elite power rather than dismantle the structural conditions enabling conflict. This contextuality is underlined by an epistemological limitation at the heart of GNR as a normative assumption: constitutional settlements can address only the grievances identified at a particular historical moment; political preferences and frustrations of future generations remain beyond the promise any "presentist" constitutional text can deliver.

Keywords: transitional justice, Nepal, guarantees of non-repetition, accommodative constitutional design, post-conflict peacebuilding, epistemological limits

Introduction

The field of transitional justice is underpinned by a profound imperative that mass atrocities, systemic

human rights violation, and structural forms of violence do not recur (Balasco, 2013; McAuliffe, 2022). As societies emerge from the trauma of

protracted civil wars or authoritarian regimes, the immediate impulse is to seek legal and political measures that guarantee a conclusive rupture from the past (Davidovic, 2021). This aspiration, succinctly captured by the phrase “Never Again,” has transitioned from a rhetorical post-conflict political slogan into a core normative principle of international human rights law and transitional justice practice (Biddolph & Mollica, 2026).

Within the established taxonomy of transitional justice, which traditionally balances truth-seeking, memorialization, criminal prosecutions, institutional vetting, and reparations, the Guarantee of Non-Recurrence (GNR) represents the most expansive, ambitious, and conceptually complex dimension (Sarkin, 2022). Unlike backward-looking mechanisms that address specific historical violations, GNR demands a comprehensive renewal of the citizen-state relationship, aiming at re-engineering the state architecture so that the drivers of violence are systematically neutralized (Duthie, 2021; Mariezcurrena, 2019).

A central feature to contemporary GNR practices is what this article terms as accommodative constitutional design, a model that absorbs former insurgent movements into the evolving order through inclusive constitution-making processes, elected assemblies, negotiated institutional reforms, and power-sharing arrangements. Proponents of this approach argue that when former adversaries co-author the constitutional framework governing the post-conflict state, the resulting document functions not merely as a legal instrument but also as a resilient political compact that binds erstwhile combatants to the new order and precludes the ideological justifications for renewed violence (Ginsburg & Huq, 2018; O’Rourke, 2013). Over the past decades, this model has gained significant normative traction in post-conflict peacebuilding, informing political settlements in countries such as South Africa, Colombia, and, most explicitly, Nepal.

Nepal’s post-conflict transition following the 2006 Comprehensive Peace Agreement (CPA), signed on November 21 between the Government of the Seven Party Alliance, and the Communist

Party of Nepal (Maoist), represents a textbook implementation ground for accommodative constitutional design. The decade-long Maoist insurgency, waged under the banner of the “People’s War” between 1996 to 2006, had exacted a devastating human toll, resulting in over 15,000 deaths, hundreds of enforced disappearances, and large-scale displacement of rural populations (United Nations Office of the High Commissioner for Human Rights [OHCHR], 2012). The conflict was not a historical accident. It was fueled by deep-seated structural inequalities embedded within the state. A highly centralized governance structure entrenched systemic rural poverty, severe underdevelopment, and the historical marginalization of women, Dalits, Madhesis, Janajatis, and other regional and linguistic minorities (Simkhada & Oliva, 2006). The Maoist insurgency capitalized around these grievances, presenting its revolutionary project as an antidote to an exclusionary and feudal state architecture.

The 2006 peace settlement was therefore framed not merely as a conventional military truce but as a transformative social contract. The CPA was operationalized through the Interim Constitution of 2007, which provided a legal framework for Constituent Assembly elections and broader political restructuring. Under the CPA and subsequent interim compromises, the Maoists agreed to cantonment, disarmament and demobilization of its armed wing, transforming themselves into a political party to enter competitive multiparty politics.

In return, the political mainstream conceded to a sweeping program of accommodative constitutional redesign, which culminated in the landmark 2015 Constitution to secure the state against the recurrence of conflict (Hutt, 2020; Mahar, 2025). Nearly two decades after the CPA, however, the outcomes of the constitutional transformation demonstrate that the initial optimism belied the inherent limits of accommodative design as a self-sufficient GNR mechanism. Although significant changes have occurred with regard to macro-political structures, the underlying socio-economic grievances, institutional deficits, and deep-seated culture of impunity have persisted.

The Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Enforced Disappeared Persons (CIEDP), both mandated by the CPA to investigate conflict-era atrocities, have faced persistent challenges since their establishment ranging from political interference, executive stalling, and deliberate underfunding to legal evasions that shield powerful actors from accountability (Gyawali, 2025; Jeffery, 2019). The political elite, composed of both mainstream leaders and former Maoist commanders, have consistently prioritized mutual protection over victim-centered justice, wearing down the state's normative legitimacy and maintaining a chasm between the state and its citizenry (Acharya et al., 2022). As a result, progress toward truth, accountability, and reparative justice has remained limited.

The fragility of this inadequate settlement became starkly visible during the widespread youth-led protests in September 2025. While ideologically distinct from the Maoist armed insurgency of 1996–2006, these events revealed an endemic crisis that directly challenges the post-CPA democratic order, and more critically, the effectiveness of constitutional reform as a mechanism for GNR.

This empirical fact raises a fundamental question: did Nepal's peace process implement genuine structural guarantees against the repetition of conflict, or did accommodative constitutional design merely alter the modality of political contestation while leaving the core drivers of societal instability intact?

This article evaluates the institutional efficacy of Nepal's transitional justice and constitutional reform processes in achieving GNR. Adopting an exploratory, qualitative case-study approach (Yin, 2018, p. 24), the article's analytical framework reexamines critical transitional justice scholarship at the intersection of constitutional design and societal norm transformation for durable non-recurrence (Duthie, 2021; McAuliffe, 2022; Sarkin, 2022).

Empirical and theoretical insights are triangulated across three source categories. The first

includes official state and international documents such as the CPA, the Interim Constitution of 2007, the Constitution of Nepal (2015), relevant Supreme Court judgments, and reports produced by the TRC and OHCHR. The second comprises peer-reviewed scholarship on GNR operationalization and Nepal's post-conflict political economy (Dhakal, 2023, 2024; Hutt, 2020; Jeffery, 2017; Kafle, 2026). The third incorporates contemporary studies, policy briefs, civil society reports, and investigative media archives documenting the 2025 protest (Sapkota, 2026). Analysis proceeds through three thematic vectors: a structural-legal examination of Nepal's constitutional changes against international GNR standards, a political-institutional evaluation of barriers undermining accountability mechanisms, and a socio-political analysis of the 2025 unrest as symptomatic of a flawed non-repetition framework.

Anchored in the comparative experiences from South Africa and Colombia as observed cursorily in secondary literature, the article contends that non-repetition cannot be secured through inclusive constitution-making alone. Beyond requiring localized governance reforms and victim-centered accountability, Nepal's case exposes a deeper epistemological paradox: constitutional frameworks of the “present” are fundamentally unequipped to bind unpredictable grievances and political imaginations of future generations.

Review of the Relevant Discourse

The conceptual evolution of GNR

Transitional justice as both an academic field and a policy paradigm has expanded significantly over the past decades (Balasco, 2013; Ferrara, 2026; Fischer, 2011). Initially postulated in the late 1980s and early 1990s as a narrow legal framework, the field was originally concerned with the judicial dilemma of transitions from military dictatorship to democratic governance in Latin America and Southern Europe. It has since evolved into a holistic, multidimensional discipline at the intersection of law and social sciences (Arthur, 2009; Teitel, 2003). Early iterations debated the tension between peace and justice, questioning whether criminal prosecutions could be pursued

without destabilizing fragile political agreements. By the early 2000s, an emerging international consensus articulated that transitional justice rests on four mutually reinforcing pillars: the right to truth, the right to justice, the right to reparation, and the guarantees of non-repetition (Swisspeace, 2017; United Nations Security Council [UNSC], 2004). Subsequent expansions have integrated the rights to memory and reconciliation, untying the abstraction of justice into more precise tracks of prosecution, vetting, and administrative action (TRC, 2026). This creates an operational space where the pillars of transitional justice eventually culminate in securing the constitutionally imagined non-repetition guarantees.

Within this contemporary framework, GNR has evolved from a passive byproduct of successful truth and justice mechanism into an independent, proactive, and transformative requirement (Davidovic, 2021; Sarkin, 2022). GNR therefore, normatively represents the preventative horizon of transitional justice. It constitutes the institutional agenda that connects backward-looking accountability with forward-looking state-building and democratic consolidation (Duthie, 2021). According to the principle advanced by the United Nations Special Rapporteur on truth, justice, reparation, and guarantees of non-repetition, GNR cannot be achieved through singular, isolated interventions, but requires systemic change across three interconnected dimensions (de Greiff, 2012). The first involves structural and legal reforms, such as constitutional restructuring, legislative harmonization with international law, and the entrenchment of fundamental rights. The second entails institutional reforms, including security sector transformation, judicial independence, and anti-corruption oversight. The third relates to social and cultural transformation, promoting civil society empowerment, historical memory, and the cultivation of a robust human rights culture.

Mayer-Rieckh (2017) offers an important clarification to prevailing understanding of GNR. He argues that the enumerated guarantees in transitional justice principles are not hard legal mandates but contextually effective measures whose applicability varies across post-conflict

settings. He further observes that the term “guarantees of non-recurrence” is somewhat misleading because it overpromises. Non-recurrence can never be fully guaranteed by any set of measures because no institutional arrangement can eliminate the possibility of future conflict. What states owe is therefore diligent effort rather than assured outcomes. They bear obligations of means rather than results, delivering on good-faith efforts reasonably within their capacity to prevent recurrence.

Building on this observation, Ferstman (2021) examines GNR in the context of systemic and recurring violations, finding a persistent disconnect between what states formally commit to and what they actually deliver. This implementation gap, she argues, is not incidental but structurally embedded. Her findings actively call into question the confidence in GNR as an operationally reliable policy instrument.

The theoretical complexity of GNR lies precisely in its cross-cutting and contingent nature. McAuliffe (2022) identifies two distinct logics operating within GNR following internal conflicts: a legalistic logic that prioritizes institutional checks and balances, and a transformative logic that demands effective modification of the socio-economic conditions which initially enabled conflict. When these logics are pursued in isolation, and when legal engineering proceeds without structural redistribution, the resulting framework risks treating the symptoms of violence while leaving its fundamental drivers intact.

Constitutional design as a GNR mechanism

Among the diverse instruments of non-repetition, constitutional reform has emerged as a particularly powerful vehicle for prevention (Duthie, 2014). Whether undertaken through the adoption of entirely new constitutions, transitional frameworks, or expansive amendments, constitutional reform holds the unique capacity to reinvent the state itself. It restructures power relations, entrenches legally binding human rights protections, redefines the boundaries of the political community, and incorporates institutional safeguards capable of deterring future abuses.

Yet, as Duthie (2014) cautions, constitutional amendments and institutional design remain intrinsically fragile if they fail to dismantle deep inequalities and the structural marginalization of vulnerable populations. If the post-conflict state merely replicates patterns of elite accumulation and political exclusion under new legal signage, the probability of renewed conflict remains critically high (Mani, 2002; Waldorf, 2012).

A particularly influential variant of constitutional reform as GNR is what this article terms as accommodative constitutional design, a model in which former combatants and rebel movements are incorporated into the post-conflict order through inclusive constitution-drafting, elected assemblies, negotiated institutional reforms, and power-sharing arrangements. While its participatory paradigm retains normative appeal, successive scholarship has engaged with its complexities more convincingly. Rebel inclusion in constitution-making does not necessarily translate into durable structural transformation; it may simply reconfigure elite power arrangements under democratic cover (Samuels, 2006; Waldorf, 2012). Mariezcurrana (2019) argues that successful GNR operationalization depends upon long-term political will, institutional enforcement capacity, and the meaningful integration of victims' voices into public policy design. These conditions are precisely what accommodative settlements oriented primarily toward elite bargaining tend to lack.

Without these operational fundamentals, constitutional guarantees risk degenerating into symbolic legalism that fails to improve the lived experiences of citizens. Kinder (2020) captures this tension precisely, warning that institutional frameworks, however well-designed, lose preventive force when disconnected from the lived material conditions, reducing constitutions to little more than just "paper walls." This insight demands constitutions to be received not as self-sufficient legal instruments but as political arrangements whose effectiveness depends on continuous social negotiation and renewal.

A more profound limitation, however, remains insufficiently theorized within the existing

transitional justice scholarship on GNR. The architecture of non-repetition is oriented toward the long future, yet any present structural arrangement can only respond to the known drivers of past and current conflict. The unknown grievances, political realignments, and socio-economic transformations of future generations lie beyond the reach of any constitutional text, however inclusively designed. This temporal and epistemological paradox places a fundamental ceiling on what accommodative constitutional design can promise as a guarantee of non-repetition. Nepal's post-2006 experience offers a uniquely instructive prism through which this gap can be examined, demonstrating how constitutional settlements designed to address the grievances of a 1990s insurgency proved insufficient against the entirely distinct protests that erupted in late 2025.

Comparative Evidence: South Africa and Colombia

Comparative experience reveals a persistent divergence between progressive constitutional frameworks and robust operational transformation. The South African transition of the 1990s is frequently cited as a success story of political settlement, where a progressive constitution and the work of the TRC helped avert catastrophic racial conflict (Boraine, 2000). The TRC achieved significant victory in documenting the horrors of apartheid and establishing a shared national narrative. However, contemporary studies note that the transition's failure to dismantle entrenched macroeconomic inequalities and spatial segregations compromised long-term guarantees of non-recurrence, manifesting today in endemic social instability, high crime rates, and widespread public disillusionment (Mamdani, 2002; Nagy, 2008).

The Colombian peace process offers a more recent parallel. The 2016 Final Peace Agreement between the Santos administration and the Revolutionary Armed Forces of Colombia–People's Army (FARC-EP) created the Comprehensive System for Truth, Justice, Reparation and Non-Recurrence, widely regarded as the most sophisticated transitional justice apparatus ever designed (Subotić, 2019). The Colombian model explicitly integrated GNR

across the accord, linking agrarian reform, political participation, and specialized criminal jurisdictions to non-recurrence guarantees. In practice, however, serious implementation deficits continue to threaten the sustainability of peace. These include targeted assassinations of demobilized combatants and social leaders, alongside the state's failure to establish administrative presence in former conflict zones (Gallen & Moffett, 2022; Laplante, 2021). Together, these cases demonstrate that legal and constitutional engineering alone cannot secure non-repetition in the absence of sustained local implementation, a secure post-conflict justice environment, and systemic economic transformation.

Ideological shifts in Nepal's transitional landscape

Understanding the specific challenges confronting Nepal's GNR framework requires situating its transitional justice architecture within the country's shifting ideological and political currents to which the structural elements of post-conflict transition are intensely connected. Earlier work on the historical evolution of Nepal's leftist movements has traced how the theory of "People's Multiparty Democracy" (PMPD), formulated by Madan Kumar Bhandari in the early 1990s, reconciled Marxist class-struggle narratives with Nepali socio-political realities, emphasizing democratic elections, rule of law, and peaceful parliamentary contestation (Dhakal, 2023). This ideological negotiation pragmatically reshaped Nepal's traditional left, establishing a precedent for combining radical socio-economic ambition with the mainstream democratic process.

The post-2006 transition displays a similar trajectory. Following a decade of armed struggle, the Communist Party of Nepal (Maoist) underwent a remarkably comparable transformation, accepting competitive multiparty politics and constitutional democracy in exchange for a decisive role in the constitution-drafting process supported by the United Nations and the international community (Jeffery, 2017). This transition corresponds to the broad trend identified in the literature, but there is another side to it as well. The historical construct

of Nepali state discourse reveals that political settlements consistently suffer from profound tensions between elite-driven diplomatic narratives and the complex realities of the public sphere (Dhakal, 2024). State legitimacy and public trust are not automatically secured by constitutional pacts or international recognitions; they are continuously negotiated through the state's practical treatment of sovereignty and civic inclusion.

Applied to Nepal's post-2006 transitional justice process, these insights illustrate why GNR has stagnated. Although the formal structures of the state were radically transformed to match progressive democratic narratives, the underlying political culture remained tangled in elite power-sharing dynamics and institutional inertia. The TRC and CIEDP became sites of political contestation, where conflict parties sought to protect their respective cadres and officers from criminal prosecution, effectively stalling the CPA's accountability mandates (Jeffery, 2019). Most recently, the TRC's four-year strategic plan adopted in early 2026 recognized these shortcomings in general terms and responded by expanding its transitional justice framework beyond the traditional four pillars to six, adding memory and reconciliation alongside truth, reparations, and prosecution, and positioned guarantee of non-recurrence as their collective ultimate destination (TRC, 2026).

This reconceptualization is significant for two reasons. First, it represents a formal institutional acknowledgment that nearly two decades of post-CPA implementation have been insufficient to secure non-repetition. Second, it implicitly concedes that accommodative constitutional design sustaining the 2006 settlement has not, on its own, delivered the promised structural transformation. The result is a transitional justice process trapped in a chronic implementation gap, where progressive legal arrangements coexist with entrenched impunity and deepening public alienation (Gyawali, 2025; Jeffery, 2019). It exposes a glaring contradiction, where the parties to the conflict, both Maoists and the traditional establishment, designed institutional arrangements with built-in incentives to protect themselves from legal consequences.

Results and Discussion

Structural promise of constitutional design

The 2006 CPA initiated an accommodative constitutional experiment aimed at reconstructing a post-conflict state. By the time the 2015 Constitution was promulgated, this enterprise had delivered measurable formal achievements. The constitutional arrangement abolished the monarchy and reconstituted Nepal as a secular, inclusive federal democratic republic. A seven-province federal structure redistributed formal political authority from the historically dominant capital of Kathmandu to peripheral regions long excluded from state power. The constitution mandated for a minimum threshold of 33 percent women's representation in elected bodies — from local governments to the federal parliament — alongside provisions guaranteeing political participation for Dalits, Madhesi, Janajatis, and other historically marginalized communities in proportion to their population share. By any recognized measure, these were significant achievements of inclusive constitutional engineering, widely understood at the time of their adoption as durable assurances against conflict recurrence.

Yet, the structural tenet of these reforms has been systematically undermined by the manner of their implementation. Federalism, rather than functioning as a vehicle for genuine political and economic decentralization, has largely operated as a mechanism for managing the intermediate and managerial elite. The multiplication of governance tiers created by the seven-province structure generated an enormous expansion of political positions, accommodating party cadres across all major formations into salaried state roles rather than transforming the substantive distribution of power. Nepal's provincial assemblies collectively seat 550 elected members across seven provinces, a figure widely criticized as disproportionate for a country of approximately 30 million people and fiscally burdensome for a resource-constrained state (Forum of Federations, 2023; Mahar, 2025). The federal parliament adds a further 334 members across the House of Representatives and the National Assembly. Critics across the broad spectrum have argued that this legislative architecture functions

less as representative democracy and more as an institutionalized patronage network while producing limited legislative output or meaningful policy transformation (Mahar, 2025).

The inclusivity provisions of the 2015 Constitution present a similarly complex picture. Representational gains for women and marginalized communities at the legislative level have not translated into commensurate returns in executive power, bureaucratic leadership, or economic growth. The literature on democratic transitions increasingly emphasizes that political inclusion works only when it becomes a vital driver of socio-economic development. Rather than relying solely on technocratic meritocracy, modern state-building frameworks emphasize broad-based civic participation in decision-making processes, which mitigates conflict and ensures stability necessary for economic transformation (Robinson & Acemoglu, 2012, pp. 185-190).

Contrary to these suggestions of scholarship, Nepal has not seen economic transformation under these “inclusive” political institutions. Deep-rooted caste discrimination and gender hierarchies have proven resistant to constitutional prescription alone. Federalism, promised as a mechanism through which historically excluded communities would gain fiscal autonomy and genuine political agency, has instead been marked by chronic underfunding of provincial governments, a steep reduction of approximately 26 percent in federal fiscal equalization grants to local governments in 2024, and repeated disputes over intergovernmental coordination (Acharya & Zafarullah, 2025; The Annapurna Express, 2025). Inclusion, which is supposed to be the means to achieve transformation, has been treated as a political end in itself. As a result, the constitutional settlement anticipated to cure the socio-economic and political breakdown has ultimately delivered representation without redistribution and inclusion without fiscal dividend, a gap at the heart of Nepal's GNR failure.

Comparative parallels

The implementation divide in Nepal's non-repetition framework mirrors the structural

vulnerabilities observed in South Africa and Colombia. South Africa's celebrated 1990s settlement produced public disillusionment due to its failure to generate the robust economic growth required for meaningful redistribution; Nepal's 2015 Constitution delivered extensive formal representation while leaving the material realities of the population largely unchanged.

The Colombian peace process demonstrates similar challenges. The sophisticated architecture of the 2016 Final Peace Agreement has been continuously undermined by targeted violence and a severe discrepancy in localized state enforcement. In all three contexts, the foundational issue lies in treating accommodative constitutional design as a self-executing remedy, followed by the pervading sense of complacency after achieving immediate peace. The architects of these transitions built fragile "paper walls" by prioritizing short-term elite stabilization over deep-rooted structural reform. When post-conflict states embrace political inclusion but shield ruling elites from accountability, they leave the original engines of societal instability intact. This dynamic risks the re-emergence of unresolved past grievances as organized violence in the future.

Subversion of accountability

The most consequential failure of Nepal's post-2006 transition lies in the systematic subversion of its transitional justice architecture and other accountability institutions. Although the CPA explicitly mandated mechanisms to address conflict-era human right violations, these bodies have been functionally incapacitated since their inception (TRC, 2026). The political class that governed Nepal since 2006, comprising of both mainstream party leaders and former Maoist commanders who co-authored the accommodative constitutional order, prioritized mutual protection over victim-centered justice. Former rebels-turned-parliamentarians and ministers used their institutional positions to obstruct TRC proceedings, delay legislation, and resist the Supreme Court's repeated directives to align Nepal's transitional justice laws with international standards. While the 2024 amendment of the TRC Act provided a long-awaited legal breakthrough, the government's

May 2026 blanket ordinance has effectively frozen progress, leaving commissions vacant and the entire process stalled once again.

This subtext exemplifies what the literature identifies as elite capture, the process by which reformed institutions designed to redistribute power are colonized by the same political networks they were intended to constrain (Waldorf, 2012). In Nepal's case, elite capture operates not as a deviation from the accommodative model but as its logical outcome. When former adversaries co-author a constitutional settlement, they simultaneously co-author the conditions for their mutual impunity. In this regard, the post-September 2025 political elite appears to be no exception. This has collectively eroded the capability of constitutional bodies, judiciary, law enforcement and other state instruments established to ensure state accountability.

The TRC's four-year strategic plan adopted in early 2026, which formally expanded Nepal's transitional justice framework to six pillars and repositioned the GNR as its collective destination, is itself an institutional acknowledgment that the existing architecture has failed to deliver on the CPA's transformative commitments (TRC, 2026). Victims of the September 2025 protests face a comparable impasse, underscoring how repeated neglect has structurally eroded the state's normative legitimacy, upon which GNR frameworks depend as the foundation for sustainable peace. This reflects the failure mode Mayer-Rieckh (2017) identifies, where states fulfill obligations of means in form while abandoning them in substance.

The return of political violence through social unrest

The consequences of deferred justice and unfulfilled constitutional promises became undeniably visible in September 2025, when youth protests of unprecedented scale erupted across Nepal's major cities. Led primarily by the generation with no living memory of the Maoist People's War but deeply shaped by its unresolved aftermath (Sapkota, 2026), the protest was triggered by a government social media restriction widely perceived as an act of political censorship.

Demonstrations on September 8 and 9 escalated into violence, with protesters occupying and setting fire to major state buildings including the parliament complex, the government secretariat at historic Singha Durbar, the Supreme Court, and the presidential office. Security forces responded with lethal force, killing 42 people, when police opened fire on demonstrators (National Human Rights Commission [NHRC], 2026). Prime Minister KP Sharma Oli resigned on September 9.

The NHRC's investigation report of May 27, 2026, constitutes the most authoritative institutional reckoning of these events. It identified gross human rights violations committed by the state, implicating the former Prime Minister, Home Minister, and Communications Minister for failing to restrain disproportionate force, and recommended legal action (NHRC, 2026; The Kathmandu Post, 2026; The Week, 2026). The commission also documented serious violations by protest organizers, finding 52 individuals and 17 current lawmakers accountable for criminal investigation. Protest leaders were found to have deployed school children as human shields, disseminated instructions for manufacturing incendiary devices via social media, and openly incited violence through coordinated online campaigns before and during the protests (Nepal News, 2026).

This dual accountability finding is analytically significant. The September 2025 breakdown was not simply an instance of state repression of peaceful protests. It was the disintegration of democratic norms on multiple fronts. Nearly two decades of deferred justice and unfulfilled constitutional promises so thoroughly eroded Nepal's civic foundations that legitimate political grievance turned into organized violence. This is, if anything, a more glaring display of the GNR framework's failure than state repression alone, since it indicates how the normative compact underlying democratic contestation has been corroded from within. As a result, both the state enforcers as well as their non-state challengers stand accused of violating the foundational political norms. This provides the definitive metric of institutional failure, rendering transitional

justice and constitutional framework incapable of securing the civic conditions necessary for non-repetition.

The pattern of violence, committed by both state and non-state actors, followed by formal investigation and systematic impunity runs as a constant thread through Nepal's entire democratic era. After the 1990 People's Movement, the Mallik Commission documented protest killings, but its findings were concealed. After the 2006 uprising, the Rayamajhi Commission recorded at least 19 deaths. Its report was suppressed too. The CPA, explicitly commissioned both the Government of Nepal and the Maoist party to investigate conflict-era human rights violations committed by both parties to the armed conflict, representing the most formal and binding accountability promise ever made to its citizens. Nearly two decades later, that promise remains substantively unfulfilled. The Lal Commission established to investigate the 45 deaths during the 2015 Madhesi protests remains unpublished despite repeated commitments (Human Rights Watch, 2026).

September 2025 did not interrupt this sequence – it rather extended it. The NHRC's accountability recommendations were more far-reaching than any previous inquiry. At the same time, the underlying institutional dynamic remains unchanged where formal investigation helps absorb public outrage without producing accountability. The government of the victors might choose to selectively implement these recommendations only against the side that has been perceived as electorally vanquished. A constitutional order explicitly designed to guarantee non-repetition has instead reproduced this cycle of impunity across three successive decades. This is not a peripheral observation of this article. It is its central empirical conclusion.

Theoretical implications: the limits of accommodative constitutional design as GNR

Nepal's post-2006 experience produces several theoretically significant insights for the broader scholarship on GNR and accommodative constitutional design. The first concerns the internal contradiction of the accommodative model

itself. The incorporation of former combatants into the constitutional order as co-authors of the post-conflict state, often acknowledged as the price of peace, secured short-term stabilization at the cost of long-term accountability. The same actors whose grievances necessitated constitutional redesign become gatekeepers of the institutions mandated to deliver justice for the conflict they waged. In Nepal, this contradiction has produced a transitional justice architecture that is formally progressive but substantively gridlocked, precisely because its overseers have a structural interest in its failure.

The second theoretical finding concerns the correlation between representational inclusion and substantive economic transformation. Nepal's constitution achieved significant formal inclusivity through gender quotas, ethnic representation, and federal devolution. Yet these gains have not produced the socio-economic transformation envisioned in the CPA or targeted by GNR frameworks. Federalism has functioned more as a mechanism of cadre accommodation than genuine power redistribution. Ferstman (2021) observes that guarantees of non-recurrence consistently reveal implementation gaps between formal legal commitments and concrete preventive outcomes. Nepal's experience confirms this observation at scale, demonstrating that the gap widens in proportion to the degree of elite control within reformed institutions.

The third and most theoretically significant finding concerns the epistemological limitation at the heart of GNR as a normative principle. The September 2025 protests were not driven by the grievances of the 1996 Maoist insurgency but by an entirely new configuration of political frustrations. No constitutional text drafted in 2007 or 2015 could have anticipated this precise convergence. This is not a failure of constitutional drafting but a structural feature of GNR as a framework oriented toward an unforeseen future. It reinforces Mayer-Rieckh's (2017) argument that state failure lies not in the inability to guarantee absolute outcomes, but in the abandonment of required means. Nepal's case corresponds to this as obligations of means are systematically abandoned through elite control

and accountability subversion, causing the state to lose the adaptive capacity of responding to emerging grievances before they escalate into violent disruptions.

The political response to the September protests has produced a further constitutional moment that illuminates this dynamic with particular clarity. The current government, led by the Rastriya Swatantra Party, one of the principal political formations that emerged from and channeled the 2025 protests, has initiated a constitutional amendment process. A task force has been constituted and more than forty thousand public suggestions have been collected. Consultations with constitutional experts and stakeholders are ongoing (The Kathmandu Post, 2026). This development illustrates the undercurrent that runs through Nepal's entire post-CPA journey. Every political settlement generates its own inadequacies, which successive actors then attempt to address through further constitutional adjustment. The "present" perpetually tries to exercise influence over an "unknowable future" reaching forward through institutional redesign to shape conditions it cannot fully anticipate. This is not constitutional failure in the conventional sense. It is an evidence of something more structurally significant that constitutional design, however iterative and responsive, operates under an irreducible temporal constraint. It can only respond to the known grievances of its moment. The unknown political formations, socio-economic dislocations, and generational frustrations of the future remain perpetually beyond their reach, returning always as the unfinished business of the present.

Taken together, these findings suggest that accommodative constitutional design, as currently theorized and practiced, conflates two analytically distinct objectives: the stabilization of elite conflict and the structural prevention of recurring violence. It achieves the former with reasonable effectiveness; the latter requires precisely the conditions that elite driven settlements tend to undermine. Non-repetition as a matter of fact cannot be secured at the level of constitutional text. It requires a continuous, multi-generational

practice of institutional accountability, economic transformation, and responsive governance, none of which can be guaranteed by the act of constitution-drafting in isolation.

Summary and Conclusion

Nepal's post-2006 peace process was, by the standards of international transitional justice practice, an ambitious and deliberate undertaking. It drew on the most normatively sophisticated tools available to post-conflict states - incorporating former combatants into democratic politics, redesigning the constitutional order through participatory process, and restructuring the state along inclusive federal lines to address historical marginalization. This culmination, expected to guarantee non-recurrence, tumbled in September 2025 down to urban political violence, and now forces a reckoning not only with Nepal's specific failures but also with the theoretical assumptions that made such an outcome possible.

The central argument this article has advanced is that accommodative constitutional design, as a GNR mechanism contains a structural contradiction insufficiently theorized in the transitional justice scholarship. The inclusivity argument that gives the model its normative legitimacy centers around the inclusion of former adversaries as co-architects of the post-conflict state, yet simultaneously creates conditions for accountability subversion. Those who are given a stake in the new order are also given the means to protect themselves from its justice mechanisms. This is not a contingent failure that better institutional design could have prevented. It is an inherent flaw within the model itself, and Nepal's experience makes it visible with unusual clarity precisely because the model was applied so faithfully.

Comparative evidence from South Africa and Colombia deepens this conclusion rather than qualifying it. Both transitions deployed sophisticated constitutional and institutional frameworks oriented toward non-recurrence, yet each has confronted, in its own historically specific way, the gap between formal structural achievement and the lived conditions of sustainable

peace. The forms of recurrence differ across contexts, but the underlying dynamic is consistent in that constitutional engineering addresses the known drivers of past conflict while leaving the state structurally unprepared for the unfamiliar grievances that future generations inevitably produce.

This observation points toward the philosophical dimension of GNR that the discipline of transitional justice most urgently needs to engage more directly. Arendt (1958) claims that political action is by nature unpredictable and generative of consequences that escape the intentions of those who initiate it. Popper (1945) warns against attempts to engineer open societies toward predetermined futures because they tend to produce outcomes that confound the designs of their architects. Teitel (2000) adds that transitional jurisprudence is always historically situated and is the law of a particular moment rather than a timeless template. These philosophical cautions directly correspond to the practice of transitional justice as an act of post-conflict state building. For Sandel (2009), justice encapsulates more than just a neutral framework of laws, the optimization of overall utility, or the absolute protection of personal liberties, fundamentally demanding a shared societal commitment to defining and pursuing the common good.

Together, these ideas illustrate what Nepal's experience demonstrates empirically. The very "future" GNR seeks to secure is not merely uncertain but structurally unknowable, and that this unknowability is not a technical problem to be solved through more sophisticated institutional design but an ontological condition that any honest theory of non-repetition must confront.

The September 2025 protests in Nepal witnessed forms of political action which bore no resemblance to the insurgency the 2006 CPA was designed to resolve. A generation that did not fight the People's War, negotiate its peace, or draft the constitution nonetheless inherited all the unrealized consequences of those processes. Their feeling of estrangement was not a failure of constitutional imagination of 2006 but the inevitable arrival of

the future that no constitutional moment of the past had the ability to anticipate.

What this theoretical tension demands of transitional justice scholarship and practice is not pessimism about the value of constitutional reform but rather more rigorous honesty about what it can and cannot accomplish. Constitutional design, with a successful implementation of post-conflict transitional justice process, is necessary but not sufficient. It creates the formal conditions within which non-repetition might become possible, but those conditions require continuous renewal through political will, economic development, and genuine accountability that outlasts the settlement itself. The ongoing constitutional amendment process in Nepal highlights a political class intuitively recognizing their constitutional settlement as a mere beginning rather than a definitive endpoint, a provisional framework forever subject to revision by the futures it cannot see.

In this context, the field of transitional justice must develop a theory of non-repetition which is equally honest about its own provisionality. GNR frameworks promising structural guarantees against conflict recurrence ask more of constitutional design than any historically situated instrument can deliver. They can promise a set of institutional conditions that, when genuinely honored rather than captured, expand the state's capacity to recognize and respond to emerging grievances before they turn into political violence. This is what Nepal's experience, through its failures as much as its achievements, most significantly demonstrates.

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