

Reparations, Responsibility

 Victimhood in Transitional Societies



FROM RELIEF TO REDRESS:

Reparations In
Post-Conflict Nepal

October 2019

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Contents

| | | | |
|--------------------------------------------------|-----------|-----------------------------------------------------------------|-----------|
| Executive Summary | 3 | 4.3.3 Medical Expenses..... | 30 |
| 1. Introduction..... | 6 | 4.3.4 Financial Support to Disabled | 30 |
| 2. The Armed Conflict..... | 7 | 4.3.5 Compensation for damaged property | 31 |
| 2.1. Political and Historical Context | 7 | 4.3.6 Assistance for incommunicado detention..... | 31 |
| 2.2 The Insurgency..... | 8 | 4.3.7 Skill Development Trainings | 31 |
| 2.2.1 Causes of the conflict | 9 | 4.3.8 Assistance to children..... | 32 |
| 2.2.2 Human rights violations..... | 10 | 4.3.9 Assistance to victimized perpetrators..... | 32 |
| 2.4 Peace negotiations..... | 15 | 4.3.10 Former combatants with disability | 33 |
| 3. Transitional justice initiatives | 3 | 4.3.11 Assistance to Pregnant Combatants..... | 34 |
| 3.1 Legal framework..... | 3.1 | 4.3.12 Issuance of identity card..... | 34 |
| 3.2 Truth Commissions..... | 3.2 | 4.3.13 Psychosocial Counselling Service..... | 35 |
| 4. Reparation policy and program..... | 20 | 4.3.14 Implementing mechanisms | 35 |
| 4.1 History of Compensation law | 20 | 4.3.14 Involvement of Donors..... | 35 |
| 4.2 Pre-CPA reparative measures | 23 | 4.4 Reparation under TRC | 35 |
| 4.3 Post CPA reparative measures..... | 24 | 5. Reparation Measures..... | 37 |
| 4.3.1 Financial support to single women..... | 29 | 5.1 Defining beneficiary | 37 |
| 4.3.2 Scholarship to victims' children..... | 29 | 5.2 Process of designing reparation measures | 40 |
| | | 5.3 Shortcomings of the administrative reparation measures..... | 41 |
| | | 5.4 Implementation Challenges | 43 |
| | | 6. Conclusion | 45 |
| | | 6.1 Recommendations..... | 45 |

Executive Summary

The Nepalese Armed Conflict and Its Victims

Between 1996-2006 Nepal's civil war endured a prolonged, but low intensity conflict, with few single incidents involving large scale casualties. Nonetheless, over this period, a significant number of unlawful killings, estimated at 13,000, at least 1,300 enforced disappearances, and 200,000 displaced. In addition, a significant number of allegations of torture, inhuman and degrading treatment (2,500) persist. One significant data gap in a conflict as prolonged as in Nepal is regarding sexual and gender based violence, which it is believed remains significantly under-reported.

The causes of the civil war are often understood to include a failure by political elites to effectively govern the country in a democratic fashion and to distribute political, economic and social goods in a non-discriminatory and non-patrimonial fashion. The underlying lack of accountability, good governance and the rule of law that may have contributed as grievances to the outbreak of armed conflict as well as successive People's Movements in Nepal. However, these factors remain unaddressed and also influence the limitations of Nepal's reparations schemes to date.

Reparations Schemes

Nepalese law has several grounds on which individuals can claim compensation and reparation for harms and human rights violations related to the armed conflict. This diversity of sources and processes means that affected individuals and families have to navigate a range of state institutions and mechanisms to receive a remedy and can result in arbitrary and discriminatory treatment of victim-survivors of the conflict.

Several schemes emerged during and after the armed conflict in Nepal, addressing those who lost family members through unlawful killing, enforced disappearance, those whose property or person was injured or destroyed during the conflict, and those affected as internally displaced persons. Each scheme has its own set of challenges regarding eligibility criteria, adequacy of payment and form of reparation and associated procedures. In addition, the mapping of these various schemes across the universe of potential victim-survivors creates significant arbitrary and discriminatory treatment.

Analysis and Challenges of Reparations

Across the range of reparative schemes in Nepal, various agencies at the district level were responsible. As a result, a family that has overlapping multiple conditions of victimhood have to go through each of these procedures separately to access the different types of reparations. For example, the families of deceased and disappeared required to apply to the District Admiration Office (DAO), widows to the District Development Committee (DDC), injured and disabled to District Public Health Office (DHO), and scholarship scheme to the District Education Office (DEO). In addition, there have been little or no information at the village level about all these procedures.

The processes and procedures for reparations in Nepal are neither coherent, effective nor transparent in their operation.

In particular, the administrative reparation measures seem to have influenced by the beneficiaries' political access. For instance, the first scheme of relief (the IDP policy) was designed under the government of Nepali Congress and majority of the IDPs are perceived to belong to Nepali Congress party. Similarly, the financial assistance to those who were killed or disappeared was implemented while the Maoist party was leading the government. Majority victims of this category are perceived to belong to the Maoist and Nepali Congress party. Similarly, the reparative scheme addressing the pregnant combatants and injured and disabled former combatants were developed while Maoist were in the government.

In addition, the administrative reparation scheme excludes a certain group of victims of human rights violation who are entitled to receive reparations. For example, victims of sexual and gender based violence, torture, illegal detention and freedom of expression were not included. Similarly, the issues of child soldiers who have been disqualified during the verification process by the UNMIN are also excluded from the administrative reparative measures and the rehabilitation and integration process. They view themselves as victims of human rights violation since they were recruited while they were minors. They have also formed a separate group and advocating for their rights for reparation.

There remains significant potential for both the Truth and Reconciliation Commission (TRC) and Commission of Inquiry on Disappeared Persons (CoID) to more comprehensively address the issue of victimised perpetrators. Human rights violations occurred in Nepal in several contexts including as reprisals for prior wrongdoing. Though ex-combatant schemes have created eligibility criteria that exclude some ex-combatants on the grounds of wrongdoing, a more thorough and consistent approach to reparation for victim-survivors including complex victims is warranted in Nepal. Both Nepal's ongoing Truth and Reconciliation Commission and Commission to Investigate Disappearances have a mandate to provide for recommendations regarding reparations for human rights violations. It remains possible that both organisations could offer a more consistent holistic and comprehensive approach to reparations for Nepal's civil war harms, but it is still unclear whether the ongoing nomination process of the both commission would be able to ensure the credibility of the commission.

Recommendations

- ▶ Victims of sexual and gender based violence should be provided private and confidential spaces to come forward to document their harm, seek support services and claim reparations as a priority.
- ▶ Child soldiers should be included in reparations with particular attention to their individual experiences to craft appropriate measures to respond to their current needs.
- ▶ The TRC and CoID should adopt recommendations that specifically detail the forms and process of reparations along with developing a draft bill to facilitate its implementation.
- ▶ Consultation and victim participation should be operationalised through a range of mediums and opportunities throughout the development of reparation proposals and programmes, whether through the TRC, CoID or other bodies.

- ▶ Any reparation recommendations or programme should clearly define what is meant by reparations and the measures it includes. The Nepalese government should draw from international standards and best practices in this regard.
- ▶ Evidential burdens for proving violations such as sexual violence, disappearances, torture and serious injury should be lowered or presumptions used to help facilitate victims to access reparations.
- ▶ While the Nepalese government has provided relief to victims, which has assisted in alleviating some of their suffering, there is a need to engage in delivering reparations to victims that affirms their rights, provides them with specialist services, publicly recognises wrongdoing and guarantees non-repetition.

Abbreviations

AI Amnesty International

CA Constituent Assembly

CDO Chief District Officer

CoID Commission of Inquiry on Disappeared Persons

CPA Comprehensive Peace Agreement

CPN –UML Communist Party of Nepal – Unified Marxists – Leninist

CPN-Maoist Communist Party of Nepal-Maoist

CPN-ML Communist Party of Nepal – Marxists and Leninist

CPN-UC Communist Party of Nepal - Unity Center

CRCFAP Citizens' Relief, Compensation and Financial Assistance Procedure

CREHPA Center for Research on Environment, Health and Population Activity

DAO District Administration Office

DDC District Development Committee

DEO District Education Office

DHO District Public Health Office

ICJ International Commission of Jurists

ICTJ International Center for Transitional Justice

IDP Internally Displaced Persons

MoHA Ministry of Home Affairs

MoPR Ministry of Peace and Reconstruction

NGO Non Governmental Organization

NHRC National Human Rights Commission Act

NPR Nepalese Rupees

NPTF Nepal Peace Trust Fund

OHCHR Office of the High Commissioner for Human Rights

PLA Peoples Liberation Army

RNA Royal Nepalese Army

SPA Seven Party Alliance

TADA Terrorist and Disruptive (Control and Punishment) Act 2001

TADO Terrorist and Disruptive (Control and Punishment) Ordinance 2001

TCA Torture Compensation Act

TRC Truth and Reconciliation Commission

TRC Act Truth and Reconciliation Act

UN United Nations

UPFN United People's Front Nepal

WGEID Working Group on Enforced or Involuntary Disappearance

1. Introduction

Since 2006, Nepal's transition to democracy and its response to past human rights violations has included the investigation and some limited prosecutions of serious human rights violations; the delivery reparations to a limited pool of victims; and the pursuit of reconciliation by adopting a range of measures, including attempts at amnesty for gross violations of human rights. Shortly after signing of the Comprehensive Peace Agreement (CPA), the Nepalese government initiated administrative reparative measures with the assistance of international donors. The government's administrative reparative measures were useful in addressing some of the immediate needs of conflict victims. However, without links to any truth seeking process and/or justice measures, the intent behind these administrative reparations remains in question. Adding to the doubts over seriousness of the government efforts, these reparative measures do not include all form of human rights violations excluding, for example, victims of torture and victims of sexual and gender based violence. It has taken nearly eight years for Nepal to constitute the transitional justice mechanisms provided for in the CPA, namely the Truth and Reconciliation Commission (TRC) and Commission of Investigation on Disappeared Persons (CoID). While the TRC and CoID are both mandated to design and recommend a reparation programme, these Commissions, in four years of operations, have only managed to receive complaints and now are not operational as the terms of the members of the commissions expired in April 2019 and new appointment process is ongoing. The victim, civil society and international community is demanding halt this nontransparent process and calling for a credible and consultative process.¹ During their four year terms they are yet to design the reparation policy. Both have faced considerable setbacks including a lack of capacity and resources, and limited trust and support from the legal infrastructure. The government has made no concerted effort to address these challenges.

The purpose of this report is to outline the current reparation regime in Nepal available to victims of its internal armed conflict, as well as to analyse the achievements and challenges for this reparations regime. This report presents the findings of the Reparations, Responsibility and Victimhood project based on fieldwork conducted in 2018 with interviews and focus groups with key stakeholders along with secondary sources such as academic literature, civil society and international organization publications and government sources. This paper provides a brief analysis of state of violence, transitional justice initiatives and an in-depth analysis of the existing reparation policy and programs. Sections 2 and 3 address the historical background of the conflict, its causes and human rights abuses. Section 4 provides an overview of the transitional justice measures in Nepal, while section 5 offers a detailed analysis of Nepal's compensation law, administrative reparative measures and procedures. Finally, sections 6 and 7 conclude by previewing the prospects for further reparations in Nepal.

1 Nepal: justice stalled for conflict-era crimes, International Commission of Jurists, 29 July 2019, <https://www.icj.org/nepal-justice-stalled-for-conflict-era-crimes/>

2. The Armed Conflict

2.1. Political and Historical Context

Nepal has a long history of political violence with successive attempts to democratize the country being met with violent repression of human rights and leading to political movements with violent dimensions. It is in this context of inter-generational harms and successive human rights violations that the nature and adequacy of current reparations policies and proposals should be considered. Nepal as a State emerged only in late eighteenth century after than King of *Gorkha*, a small kingdom of the central hilly region, *Prithivi Narayan Shaha*, unified Nepal by conquering other small kingdoms.² From 1846 to 1951 Nepal was ruled by the Rana family, though a representative of the Shaha dynasty still remained *de facto* throne. In 1951, king Tribhuvan Bira Bikram Shahadev abandoned the royal palace and took shelter in Indian Embassy, which strengthened the anti-Rana movement. On the 18th February 1951, Nepal was declared a democratic country and the Rana regime came to the end.³ King Tribhuvan made a Royal proclamation promising a democratic Constitution through the election of a Constituent Assembly.

On the 9th November 1958, King Mahendra, again in a Royal Proclamation declared a general election to elect parliament mandating it to adopt a constitution, contrary to the promises made by his father.⁴ The first election of the Nepalese Parliament was held on the 18th February 1959. Despite their frustration with the King's decision, Nepali political parties and the people coped with the general election, hoping that the election of the parliament would foster stable and democratic political practice in Nepal. Regressive and reactionary forces began conspiracies under the leadership of King Mahendra leading to several disturbances. King Mahendra, in reaction to the activities of political parties, on the 15th December 1960 pursuant to Article 55 of the Constitution, dismissed the parliament, suspended the Constitution, arrested the Prime Minister, ministers and other leaders of the political parties and imposed an absolute monarchy. For 30 years, the Nepal was ruled under the absolute monarchy with no political rights until a popular movement to democratize the country in 1990.⁵

After the 1990 people's uprising, more commonly known as Janandolan-I (People's Movement I), the 'Constitution of the Kingdom of Nepal' was promulgated with the intent to establish a constitutional monarchy and multiparty democracy— a British model of parliamentary democracy. The Constitution incorporated many provisions to meet the demands of the people including civil, political, economic, social rights under fundamental rights chapter (Bill of Rights). It further declared Nepal a 'multi-cultural', 'multi-ethnic' and 'multi-lingual' kingdom. The Constitution similarly created the necessary democratic institutions. However they continued to

2 John Whelpton, *A History of Nepal*, Cambridge University Press (2005), p.1.

3 Ibid., p.87.

4 Ibid.

5 Bhuwan Lal Joshi and Leo E. Rose, *Democratic Innovations in Nepal, A Case Study of Political Acculturation*, University of California Press (1996), reprint in 2004 by Mandala Publication, Kathmandu, p. 73 – 80.

operate in line with the preceding political culture, ideological and institutional loyalties, rather than on the basis of democratic accountability or the rule of law. From the very beginning, the constitution had been criticized for 'institutionalizing, legitimizing, and engendering patterns of exclusion and discrimination by virtue of an ethno-cultural *Panchyat*-style version of Nepali nation'.⁶ These, among others, have been identified as contributing factors to the emergence and evolution of internal armed conflict (1996–2006) in Nepal.

Nepal's political history from 1951 to 2006 is marked by the peaceful, but sometimes violent, emergence of public demands for political, economic, social and cultural rights. A number of reforms in the political system have been introduced but the dominant political regimes, throughout the period, have failed to dismantle social, economic and cultural inequalities and impunity—both *de jure* and *de facto*. These structural conditions of a lack of accountability and rule of law frame not only the emergence of the most recent violence and armed conflict between 1996 and 2006, but also the subsequent transitional justice response from the Nepalese government.



Kathmandu, Nepal. Photograph by Luke Moffett

2.2 The Insurgency

The Maoist insurgency beginning in 1996 is not the first armed revolution in Nepal. Nepal Parjha Parisad (Peoples Council of Nepal) attempted the first armed rebellion in 1939 against the Rana regime, but it could not continue after Rana regime itself was abolished.⁷ The communist movement, which had also begun during the Rana regime, expanded its activities in eastern plains after King Mahendra's takeover in 1959. In 1971 the Nepal Communist Party, the old form of CPN-UML, made the first attempt to launch a 'peoples war', but royal repression soon

6 Mara Malagodi, *Constitutional Nationalism and Legal Exclusion*, Oxford (2013), p3.

7 Joshi and Rose, n.4, p. 51 – 56.

put an end to it. In 1989, the Communist Party of Nepal – Marxists and Leninist (CPN-ML), in reviewing the ideology of the communist movement in Nepal, founded a principle called 'Janta ko Bahudaliya Janabad' (people's multiparty democracy) which removed the orthodox idea of violent revolution and introduced a new notion of multiparty democracy as means to reach the goal of a socialist state.⁸ However, a small faction of the communist groups continued to operate under a Maoist ideology with their old strategy of a people's war to establish proletarian dictatorship, seemingly the primary cause for the 'People's War' in Nepal.

The internal armed conflict began in February 1996 after the submission of 40-points demand by the United People's Front Nepal (UPFN), a political front of the Communist Party of Nepal-Unity Center (CPN-UC).⁹ The UPFN demands included a new constitution by the people's representatives, abolition of royal privileges, declaration of secular state, guarantees of land rights to tenants, indigenous nationality and *Dalit* and women. While submitting the 40-points demand, the UPFN warned that they would take arms if the government did not respond positively before February 17, 1996.¹⁰ The government by and large ignored it, which led the Maoists to launch a few attacks on remote police stations and government offices –naming it a 'peoples war' (1996 – 2006) – a Shining Path model of a communist movement.

2.2.1 Causes of the conflict

Since the 1990 Constitution, laws, government policies and programs failed to address the systemic and structural problems. For nearly six years after the introduction of multiparty democracy, the Communist Party of Nepal-Maoist (CPN-Maoist) launched the 'people's war' to overthrow the constitutional monarchy and establish the 'People's Democratic Republic of Nepal'. From the very beginning of the 'peoples war', the Maoist movement sought to position itself as the voice of poor, marginalized, indigenous and ethnic minorities, peasants, worker, women and *Dalit* community of Nepal.¹¹ The Maoist insurgency, therefore, can be understood a result of endemic poverty, an exclusionary political system, marginalization, discrimination, and economic and socio-cultural inequality.¹²

In 1996, more than 30 million people in Nepal lived in rural areas, where feudal social relations impacted upon livelihoods: almost one third of the population lived on less than a dollar a day.¹³ The Nepal Living Standards Survey suggests that 42 per cent of the population was

8 Chudamani Basnet, *From Civil Society to Citizens Society: Monarchy, Insurgency, and Uprising in Nepal 1990 – 2006*, the University of Georgia (July 2010), available at: https://getd.libs.uga.edu/pdfs/basnet_chudamani_201008_phd.pdf

9 This report interchangeably uses the term internal armed conflict, Maoist insurgency and the 'People's war'.

10 Whelpton n.1, p.205.

11 Shobha Gautam, Amrita Banskota and Rita Manchandra, *Women in the Maoist insurgency in Nepal*, in D. Thapa (ed.), *Understanding the Maoist Movement of Nepal*, , Third reprint, Martin Chautari (2007) p. 97

12 Mahendra Lawoti and Anup K. Pahari, *Maoist insurgency in Nepal*, Routledge Contemporary South Asia Studies (first Indian Reprint 2010), p. 3-24.

13 UNDP, *Human development report Nepal*, UNDP Human development Report 2009: State Transformation and Human Development, (New York: UNDP, 2009): 46, available at: http://hdr.undp.org/sites/default/files/nepal_nhdr_2009.pdf (last accessed 5 January 2018)

poor in Nepal in 1995–96, when the Maoist ‘people’s war’ was launched.¹⁴ As a result, most of the studies argue that the Maoist insurgency in Nepal was a manifestation of centuries-old, exclusionary, centralist, autocratic and feudal political and social system that had nurtured social and political exclusion, discrimination, poverty and subordination in Nepalese society.¹⁵ In addition, caste-based discrimination is also identified as a root cause of the conflict.¹⁶ Despite the legal efforts to abolish the practice of untouchability in 1963, the cultural practices such as social boycott, dominance, and denial of entry, service, access to common resources or places, kinship or social relationship and participation still exist in Nepali society.

Many Nepali believed that only a communist system could change Nepal as parliamentary democracy twice (in the 1950’s and in the 1990’s) failed to address the systemic and structural problems. In addition, the failures of development assistance by the foreign donors can also be considered one of the causes of conflict,¹⁷ principally because there has been very little evidence of social or economic development, despite the last seven decades of foreign aid in Nepal. One international report written during the internal armed conflict admits that ‘the failure of development assistance to trickle down, particularly to the rural poor in the mid-West contributed to growing discontent and eventually violent insurgency.’¹⁸

The internal armed conflict intensified after 2001 when a governmental state of emergency was imposed. The deployment of Royal Nepalese Army (RNA) to counter the insurgency followed by the adoption of a draconian law *Terrorist and Disruptive (Control and Punishment) Ordinance 2001 (TADO)* and dissolution of Parliament in 2002, exacerbated the human rights and rule of law crises and prompted the removal of democratic process.¹⁹ The human rights situation was further escalated in 2005 when the King Gyanendra Bir Bikram Shah took over the executive power, dismissed the civilian Government and began ruling the country directly by declaring himself as the chairperson of the council of ministers.²⁰

2.2.2 Human rights violations

There is some agreement on the scale of particular forms of human rights violations during the armed conflict in Nepal, such as unlawful killings and enforced disappearances, while other violations, most notably sexual violence, are significantly under-reported and under-researched for a ten-year conflict. Responding to the “people’s war”, the government launched a police

operation called “Kilo Sera-II” followed by another operation called “Romeo” as counterinsurgency measures which gave rise to new patterns of human rights violations such as arbitrary arrests, enforced disappearances and unlawful killings.

Throughout the conflict both the insurgents and Royal Nepalese Army (RNA) failed to comply with international with international humanitarian law, endangering civilians and causing huge casualties. A Human Rights Watch (HRW) investigation revealed that ‘the Maoists routinely used populated areas to launch attacks or to seek shelter while fleeing a counterattack by security forces without taking any measures to remove the civilian population to safety.’²¹ Civilian casualties often occurred ‘when the RNA helicopters used indiscriminate methods of aerial bombardment’ where alleged Maoists were hiding in the homes of civilians.²²

As a part of counter insurgency measures, the security forces created vigilante groups in some of southern plains and gave them firearms and financial assistance to combat the Maoists. These groups were also involved in beating and killing suspected Maoists or their sympathizers. On the other hand, Maoist had been recruiting child soldiers in ‘Peoples Liberation Army’ (PLA). One NGO estimated that over 30% of PLA were child soldiers.²³ A HRW investigation had found that ‘majority of them had been recruited against their will—abducted from schools for an indoctrination program and then forced to stay, taken from homes under the Maoists’ “one-family, one-member” recruitment campaign, or simply kidnapped.’²⁴ From speaking to a number of child soldiers, we also found that some had joined voluntarily for a number of reasons including



Memorial to victims of the armed conflict, Nepalgunj, Nepal. Photograph by Luke Moffett

14 Poverty Trends in Nepal, 195-96, CBS, Nepal.

15 Mahendra Lawoti and Anup K. Pahari, *The Maoist Insurgency in Nepal*, Routledge, (2010) p. 3-31.

16 Center For Human Rights and Global Justice, “*The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal*,” (2005).

17 Devendra Raj Pandey, *Nepal’s Failed Development: Reflection on the Mission and Maladies*, Nepal South Asia Center (1999)

18 Jonathan Goodhand, *Violent Conflict, Poverty and Chronic poverty*, CPRC Working Paper 6, (2001) available at http://www.chronicpoverty.org/uploads/publication_files/WP06_Goodhand.pdf last visited 5 January 2018.

19 ICJ, *Nepal: National Security Laws and Human Rights Implication* (2009), p.6.

20 King Gyanendra succeeded King Birendra right after the royal massacre, where all the members of the King Birendra’s family were shot dead in the royal palace on 1st June 2001.

21 HRW, *Nepal’s Civil War: Conflict Resumes* (2006) available at : https://www.hrw.org/legacy/english/docs/2006/03/28/nepal13078_txt.htm

22 Ibid.

23 AHRC, *Children and Peoples War in Nepal* (2003)

24 HRW (2006).

poverty, death of a family member, wanting education or interested in the armed group. Indeed many of them we spoke to had varied experiences from being frontline combatants, to reserve forces involved mainly in political training or support positions such as cooks.

With the promulgation of the Terrorist and Disruptive (Control and Punishment) Act 2001 (TADA), the government declared the Maoists and its sister organization “terrorist organizations”. The TADA was initially limited to two years period (as opposed to the government’s proposal that it be effective until repeal) in response to opposition resistance.²⁵ The TADA lapsed in 2004 due to a sunset clause; however, the government of Nepal reintroduced it as an Ordinance in the absence of the Parliament until September 2006.²⁶ The definitions of “terrorist” and “person who works in collusion with terrorists” under the TADO were very vague. The TADO defined terrorist as:

“Any individual who is in contact with or involved with the person involved in terrorist and disruptive activities” and “any person who directly or indirectly supports financially and by any other means a person or group involved in terrorist and disruptive activities”.

The TADA gave wide range of power to the security forces, including the RNA, to arrest anyone suspected of being involved in terrorist and disruptive activities without an arrest warrant.²⁷ It also empowered the security forces to detain anyone up to one year under a preventive detention provision without judicial scrutiny.²⁸ It also provided immunity to the government officials and security personals from prosecution for any “work performed in good faith,” which had been used to protect security personnel from being questioned. Unfortunately, there has not been any legal scrutiny of the term “good faith”. This has significantly contributed to systematic and widespread violations of international human rights and humanitarian law and impunity for these harms.

Furthermore, the TADA was grossly misused by the security forces, which resulted in thousands of arbitrary arrests and disappearances. In 2003 and 2004, Nepal attained the ignominious distinction of recording the highest number of enforced disappearances in the world reported to the UN Working Group on Enforced or Involuntary Disappearance (WGEID), of 267 new cases of disappearances.²⁹ The OHCHR has found many of the victim subjected to disappearance during the conflict were civilian and not taking part in hostilities.³⁰

In 2005, Amnesty International (AI) observed that ‘security forces have been responsible for extrajudicial executions of civilians and suspected members of the CPN - Maoist who are in their custody, as well as the unlawful killing of armed members of the CPN – Maoist, who could have

25 Govinda Sharma “Bandi”, *Counter-terrorism laws and policy and their impact on human right: case of Nepal*, published in “War and Terror and Asian Democracy”, p.45.

26 Under Article 72 of the 1990 Constitution.

27 Section 5 of TADA.

28 Section 9 of TADA.

29 Report of the WGEID after its visit to Nepal, E/CN.4/2005/65/Add.1, 28 January 2005, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/105/23/PDF/G0510523.pdf?OpenElement>

30 OHCHR, Conflict related disappearance in Bardiya District, December 2008, p. 5, report is available at http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2008_12_19_Bardiya_Report_Final_E.pdf

been taken into custody. Meanwhile, the CPN - Maoist have abducted and killed civilians who are associated with political parties or the state, who defy its orders or who it accuses of certain “crimes”, as well as *hors de combat* security forces personnel.³¹

During the conflict, gross human rights violations including extra judicial execution, enforced disappearance, torture and sexual violence, arbitrary arrest and detention, abduction, displacement, confiscation of private property, were committed predominantly by Maoist forces.³² It is estimated that more than 13,000 were killed³³ and at least 1,300 people were subjected to enforced disappearance³⁴ and more than 200,000 people were internally displaced.³⁵ The OHCHR had documented more than 30,000 incidents and estimated up to 9000 serious breaches of international human rights and humanitarian law.³⁶ The UN commissioned ‘Nepal Conflict Report’ identifies five categories of violations – unlawful killings, enforced disappearances, torture, arbitrary arrests and sexual violence, as serious human rights violations committed during the conflict and suggests that several such cases might amount to war crimes.³⁷

It noted that “unlawful killings occurred throughout the conflict in multiple contexts: for example, during Maoist attacks on Security Force posts and bases, Government buildings, national banks and public service installations; in chance encounters and during ambushes.” The report concluded “allegations of unlawful killings and discernible patterns relating to such killings by both the Security Forces and the Maoists raise the question of whether certain patterns of unlawful killings were a part of policies (express or condoned) during the conflict.”³⁸

Regarding enforced disappearances, the OHCHR report noted that disappearances “were instigated by both parties to the conflict, the security forces and the CPN (Maoist).”³⁹ It noted that the majority of disappearances were attributed to the security forces and typically concerned suspected members or supporters of the Maoists, while in turn disappearances attributed to the Maoists focused on those allegedly collaborating with or spying for security forces.⁴⁰ A Supreme

31 Nepal: killing with Impunity, AI (2005) available at: http://www.univie.ac.at/bimtor/dateien/nepal_ai_2005_killing_with_impunity.pdf

32 Confiscation of property by Maoist was widespread and systematic during the conflict.

33 The number of killing varies depending on the record.

34 United Nations Office of the High Commissioner for Human Rights (OHCHR), Nepal Conflict Report, October 2012, available at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf

35 IDMC, Nepal: Failed Implementation of IDP policy, A profile of Internal displacement situation, 28 Jan 2010, available at : <http://www.internal-displacement.org/assets/library/Asia/Nepal/pdf/Nepal-January-2010.pdf>

36 United Nations Office of the High Commissioner fro Human Rights (OHCHR), Nepal Conflict Report, October 2012, the report is available at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf

37 United Nations Office of the High Commissioner fro Human Rights (OHCHR), Nepal Conflict Report, October 2012, the report is available at: http://www.ohchr.org/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf

38 Ibid, 7.

39 Ibid 8.

40 Ibid 19.

Court led Task Force on the disappeared detainees concluded that “during the armed conflict, arbitrary arrests, torture, killings and systematic and widespread disappearances were general practice while carrying out the counter insurgency operation against the NCP (M) by the then security forces of His Majesty’s Government of Nepal”.⁴¹

Regarding torture, OHCHR statistics suggest that at least 2500 incidences of torture, mutilation, and other sorts of cruel and inhumane and degrading treatment appear to have been perpetrated extensively during the conflict, according to available data, by both the security forces and the Maoists.⁴² There is little available data on sexual violence during Nepal’s armed conflict. OHCHR note: “Even though other serious human rights violations committed during the conflict period have been extensively investigated and reported, the documentation of sexual violence remains scarce. This is a reflection of the reality that sexual violence is often under-reported. Social and cultural taboos make victims reluctant to share their stories out of shame or for fear of being blamed. This is exacerbated by a lack of support, protection and redress mechanisms that existed during the conflict period, and the fear of repercussions or further victimization if perpetrators were reported.”⁴³ Within the limited data available, OHCHR notes that girls under the age of 18 were particularly vulnerable with more than one third of victims of sexual violence recorded being children, with many under 15 years old.⁴⁴

There are some cross cutting data on the nature of victimization in Nepal. The OHCHR notes: “Geographically, the conflict started from, and impacted most severely, the Mid-Western Rolpa and Rukum Districts, and it was here that the highest number of alleged unlawful killings were recorded. As a low-intensity conflict, the killing gradually spread throughout the Mid-Western Region and later engulfed most of the country, especially after the collapse of the ceasefire in November 2001. When the second ceasefire collapsed in August 2003, the geographic centre of unlawful killings shifted to the Central Region.”⁴⁵ It is hoped that subsequent transitional justice investigations discussed below would be able to cross-cut these data further for factors such as ethnic status, political affiliation, religion, indigenous groups, and so on.

The OHCHR statistics of human rights violations demonstrate a high male direct victim population, which seems to support the assertion that violence against women, especially sexual violence remains grossly under-reported in the context of a ten-year armed conflict.⁴⁶ There are no figures at present that claim to represent the scale of violence against women and girls during

41 In response to about 83 *Habeas Corpus* writ petitions filed at the Supreme Court, in 2006, the Supreme Court constituted a “Disappeared Investigation Task Force” (DITF), which was mandated to find out the status of the persons, thereby submitting a report along with recommendations. The Author of this write up was one of the member of the DITF.

42 United Nations Office of the High Commissioner for Human Rights (OHCHR), Nepal Conflict Report, October 2012, 20.

43 Ibid, 22.

44 Ibid, 23.

45 Ibid, 72

46 Advocacy Forum and International Centre for Transitional Justice, *Across The Lines: The impacts of Nepal’s Conflict on Women* (2010); WOREC, *Violence against Women in Nepal: A Complex and Invisible Reality* (Kathmandu, WOREC, 2006),

the Nepalese conflict, especially regarding sexual violence. The obvious risk is that these women and girls remain invisible for the purposes of investigations, accountability and reparations.

2.4 Peace negotiations

After the King’s take-over in 2005, and followed by the dissolution of the elected parliament, democratic forces, mostly those who were present in the dissolved Parliament, formed a seven party Alliance (SPA), engaged in dialogue with CPN-Maoist leadership and signed a 12 point understanding in November 2005 where both sides agreed to launch *Janaandolan-II* (people’s movement II) to restore parliament, re-establish a democratic system, end the armed conflict and write a new constitution through the election of a Constituent Assembly.



Public protest, Kathmandu, Nepal – Photograph by Luke Moffett

The people’s movement in April 2006 forced the king to step down and restore the dissolved parliament. This had led to signing the CPA in November 2006, which provided a road map for the peace process. The CPA provided a good framework for the management of arms and armies of then CPN-Maoist and for progressive restructuring the state so as to achieve economic social and cultural transformation by adopting a new constitution through the election of the Constituent Assembly. In addition, it provided for the formation of the TRC to investigate past human rights violation and provide relief and compensation to the victim and promotion of inclusive policies and program and reconstruction of some crucial infrastructures.⁴⁷ On the 28th May 2008, the Constituent Assembly, with overwhelming majority vote, abolished the centuries long monarchy and declared Nepal as a Federal Democratic Republic.

47 The full text of the CPA available: <https://peacemaker.un.org/nepal-comprehensiveagreement2006>

3. Transitional justice initiatives

3.1 Legal framework

The CPA included several provisions in relation to transitional justice, including formation of a Truth and Reconciliation Commission (TRC) for the investigation of disappeared persons, “crime against humanity” and “serious human rights violation”, providing “relief to victim” and commitment to “end impunity.”⁴⁸ In particular Article 5.2.4 states,

Both parties agree to constitute a national peace and rehabilitation commission and carry out works through it to maintain peace in the society and operate relief and rehabilitation works for the people victimized from and displaced as a result of the conflict, while normalizing the adverse situation emerged from the armed conflict.

Similarly, article 7.1.3 of the CPA states that, “Both parties express the commitment that in accordance with law, impartial investigation shall be carried out in respect of, and action taken against, those persons who are responsible for obstruction in the enjoyment of the rights mentioned in this Peace Accord and ensure that impunity shall not be encouraged. In addition, they shall also ensure the right of the victims of conflict and torture and the rights of the families of the disappeared persons to obtain relief.

The 2007 Interim Constitution reaffirmed the promises made by the CPA by incorporating those provisions in the Constitution. The Constitution, under the chapter of the Obligation, Directive Principles and Policies of the State, clarified the transitional justice measures by elaborating the scheme with relief and rehabilitation to the families of the disappeared persons, deceased, injured, disable persons with incapability’s and internally displaced person due to the conflict as per the recommendation of the Commission.⁴⁹ Following up the CPA and the Interim Constitution, the government was to formulate laws and policies to form a TRC in order to implement transitional justice measures.

However, the political parties failed to agree on the mandate of the commission as the Maoist and the security forces manipulated the promises made by the CPA and Interim Constitution. The argument was that the whole process was designed for the reconciliation, which could only be achieved by granting an amnesty. Whereas the victims, human rights groups and international community underlined the need to end impunity, which brought a great division among the key players. This resulted in the failure of the parliament to adopt transitional justice legislation tabled in the Parliament.⁵⁰

In April 2013, the government promulgated an Ordinance to establish TRC, however, the Supreme Court found the Ordinance unconstitutional and incompatible with victims’ right to truth, justice

48 Article 5.2.4.

49 Article 33(p), (q) and (r) of the 2007 Interim Constitution.

50 In 2009 Disappearance Bill and in 2010 the TRC Bill was tabled in the Constituent Assembly, however failed to be adopted due to differences between the major political parties.

and reparation. It issued a directive order to the government of Nepal to make appropriate arrangement to provide reparation to the victims and their families with enough economic, legal and institutional arrangements.⁵¹ The Supreme Court decision states:

“.....an order is hereby issued to make legal reforms and adopt practical measures in implementation phases to make legal provisions for the criminalization of the acts of serious human rights violations so as to have a comprehensive management of truth finding and reconciliation; to initiate extensive campaigns to promote the spirit of reconciliation; to provide for reparation to the victims and their families with enough economic, legal and institutional arrangement; and to ensure the autonomy and impartiality of the Truth and Reconciliation Commission by forming such a Commission constituting only of individuals who, during conflict, were not parties to that conflict or were not involved, in any way, either to repress that conflict or were part of the administration thus being party to the conflict, or who do not have any negative records of human rights violations, and also in line with the internationally accepted standards; to make and implement victim and witness protection program for them to be able to tell their truth, to be able to effectively defend it, and to protect their individual identity related details; to arrange for, if needed, in-camera hearing or distance hearing by arranging various means including of audio-visual technique.”⁵²

In May 2014, the parliament adopted the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act (TRC Act). This Act aims to establish two separate commissions – a Truth and Reconciliation Commission (TRC) and a Commission on Investigation of the Disappeared Persons (CoID) in order to find the actual facts and make them public by investigating the truth about the persons involved in gross violation of human rights and crime against humanity during the armed conflict; to create environment of peace and reconciliation in the society by promoting mutual feelings, respect and tolerance; to recommend reparations to the victims and prosecution to those involved in serious violation of human rights crimes, among others.⁵³ However, the TRC Act again empowered the commission to recommend for amnesty on serious crimes and reconcile between victim and perpetrators even without the consent of the victim,⁵⁴ ignoring the mandatory order of the Supreme Court.⁵⁵

Stakeholders including conflict victims raised concerns on some provisions of the TRC Act, particularly the amnesty provision and challenged it before the Supreme Court. The Supreme Court rejected the amnesty power of the Commissions for serious crimes and recognized

51 *Advocate Madhav Kumar Basnet et al v. Prime Minister and Council of Ministers*, Nepal Law Journal 2014 Issue 9, Decision no 9061.

52 *Ibid.* P. 38 Para d.

53 Preamble para 3 of the TRC Act.

54 Section 22 and 26 of the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act, available at: www.lawcommission.gov.np

55 Article 116 of the Interim Constitution, 2007 and Article 126(2) of the Constitution of Nepal 2015 requires all the state agencies and individuals to abide by the order of the court.

victim's voluntary consent in any reconciliation process.⁵⁶ The court, in many instances, made observation about victim's right to truth, justice and reparation in line with international standards;⁵⁷ examined the executive and legislative action and directed the government to reform its policies and laws⁵⁸ and required the government to form a separate commission of inquiry on 'enforced disappearance'⁵⁹ and a TRC for the investigation of other human rights violations.⁶⁰ The role of the court in transition is always crucial and critical; the intervention of the court in beginning of the transitional justice process seems quite unique in Nepal. However, the court has also been criticized⁶¹ for the role it played in shaping the transitional justice discourse in Nepal.

In May 2014, the *Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act, 2014 (2071)* (TRC Act) was promulgated by Parliament as a slightly modified version of the old Ordinance that had been declared unconstitutional. The TRC Act provided for two separate commissions, empowering it to carry out investigation, recommend for reparation and prosecution. However, the Act failed to categorize non 'amnestiable' crimes as required by the Supreme Court. Thus, 234 conflict victims throughout the country filed a writ petition challenging some provisions of the TRC Act, including the provisions relating to amnesty and forced reconciliation. On February 26, 2015, the Supreme Court struck down certain provisions of the TRC Act. It again rejected the amnesty power of the Commissions on serious human rights violations, required voluntary and informed consent of the conflict victims for reconciliation; and directed the relevant authorities, including the Commissions, to comply with previous Supreme Court rulings and international standards while adopting transitional justice measures.⁶²

3.2 Truth Commissions

On the 10th February 2015, the government formed TRC and CoID with a two-year mandate, when the cases discussed above were under consider by the Supreme Court. The mandated functions of the commissions included investigation of complaints, identification of victims and perpetrators, determination of violations committed, examination of root cause of human rights violations, recommendation for prosecution and reparation to the victims.⁶³ The TRC Act also

56 *Suman Adhikari et al v. Prime Minister and Council of Ministers*, Nepal Law Journal 2015, Issue 12, Decision no 9303

57 *Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v. the Government of Nepal*, Nepal Law Journal 2007, Issue 3, decision no 7817, *Liladhar Bhandari et al v. the Government of Nepal*, Nepal Law Journal 2008, Issue 9, Decision no 8012, *Advocate Madhav Kumar Basnet et al v. Prime Minister and Council of Ministers*, Nepal Law Journal 2014 Issue 9, Decision no 906.1

58 *Advocate Madhav Kumar Basnet et al v. Prime Minister and Council of Ministers*, Nepal Law Journal 2014 Issue 9, Decision no 9061

59 *Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v. the Government of Nepal*, Nepal Law Journal 2007, Issue 3, decision no 7817.

60 *Advocate Madhav Kumar Basnet et al v. Prime Minister and Council of Ministers*, Nepal Law Journal 2014 Issue 9, Decision no 9061.

61 Maoist had publicly criticized the court for this: <http://kathmandupost.ekantipur.com/news/2016-03-19/maoists-against-courts-dealing-with-war-era-cases.html>

62 *Suman Adhikari et al v. Prime Minister and Council of Ministers*, Nepal Law Journal 2015, Issue 12, Decision no 9303

63 Section 13 of the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014.

had amnesty provision for serious human rights violation but that had been struck down by the Supreme Court. However, the government has not amended the TRC Act to reconstitute the mandate as directed by the Supreme Court. This disjointed mandate has been one of the problems for commissions not being able to effectively perform their task.

The TRC has received 60,298 complaints and the CoID has received 3,093 complaints of human rights violations.⁶⁴ The complaints filed so far includes, extrajudicial execution, torture, displacement, confiscation of property, rape and sexual violence, illegal detention, abduction and hostage taking, disability and complaints of disappearance. The mandate of the Commissions was extended twice,⁶⁵ but no substantive work has been published yet. Both of the Commissions have not so far categorized the complaints on the basis of gender, ethnicity, age, or other criteria.

Considering the failure of the commissions to establish the truth, the Nepali Parliament amended the TRC act in February 2019 requiring the Government to make fresh appointment of the members of the commission by April 2019. A Selection committee was formed in 25 March, 2019 under the convenorship of the former chief justice of the Supreme Court with other 3 members of civil society and a representative of the NHRC as ex-officio member. However, the recommendation committee is yet to select the members of the both commission.



Memorial garden in Bardiya, Nepal – Photograph by Luke Moffett

The additional one-year extension of the mandate seems very insufficient considering the large numbers of the complaints specially when considering both limited capacity and lack of resources. Moreover the one year extension each year allows little time for long term planning and there have been repeated delays with the appointment of commissioners. The TRC and CoID have been facing multiple challenges since beginning including lack of trust between the Commissions and stakeholders including victims because of the non-transparent, non-consultative and politically motivated selection process of the members of the Commissions, the government's failure to amend the TRC Act in line with the Supreme Court rulings and lack of necessary legal and institutional infrastructure. These challenges are complex and there seems little or no political will to resolve them.

64 Data received from TRC and CoID in December 2017.

65 The mandate of the commissions have been extended at one year at a time, including the latest in February 2019 until 2020.

4. Reparation Policy and Program

Nepalese law has several grounds on which individuals can claim compensation and reparation for harms and human rights violations related to the armed conflict. This diversity of sources and processes means that affected individuals and families have to navigate a range of state institutions and mechanisms to receive a remedy and can result in arbitrary and discriminatory treatment of victim-survivors of the conflict.

4.1 History of Compensation Law

Nepalese law has several areas where financial compensation is provided for wrongdoing. These pre-existing provisions give context to more recent conflict-related reparations programs and remain a potential basis for individuals to access a remedy for a conflict related harm. Although Nepal lacks tort law, provisions for relief such as funeral expenses for accidental death,⁶⁶ medical expenses for physical assault,⁶⁷ and compensation for the victim of rape⁶⁸ were included in the old Country Code 1854 (*Muluki Ain*), the first codified national law.⁶⁹

The Country Code, (*Muluki Ain*), which was revised in 1963, and the subsequent amendments up to 2018 made has furthered the provisions of compensation.⁷⁰ The obligation to provide compensation lies with perpetrator not on the state. For example, various sections of the Chapter on Battery and Assault (*Kutpit*) of the Country Code required the perpetrator to pay the medical expenses to the victim. During the party-less Panchayat system⁷¹ a number of specific laws were enacted with some compensatory provisions for personal injuries. The Public Security Act, 1989 guarantees the right to compensation of the person who is illegally kept under the preventive detention.⁷²

These legislative provisions address criminal wrongdoing, but have significant limitations. Without a conviction of the alleged perpetrator, no compensation can be awarded to victims and no private civil claims can arise. In addition, the amount of compensation provided for in legislation remains low, even for a country with Nepal's level of economic development. According to the Annual Report of the Office of the Attorney General, the success rate in the criminal case stands around 35% to 38% over the last few fiscal years.⁷³ Thirdly, many criminal cases do not

66 No 2, 3, 4, 5 of the Country Code 1854, had provision for funeral from 50 to 100 rupees and 10 rupees for injured.

67 No 2 of Chapter on Battery and Physical Injury and No 3,4,7,8 and 9 of Chapter on Transport of the Country Code 1854.

68 No 1 of the Chapter on Rape of the Country Code 1854.

69 The Country Code 1854 was introduced by then Prime Minister *Janga Bahadur Rana* upon his returns from London. It was a collection of administrative procedures and legal frameworks for interpreting civil and criminal matters, revenue collection, landlord and peasant relations, inter-caste disputes, and marriage and family law.

70 Nepalese Criminal Code 2018

71 The Panchayat System was imposed by King *Mahendra* after overthrowing the first democratically elected government and dissolving the parliament in 1960.

72 Section 12 (a) of Public Security Act, 1989.

73 Annual report of the Office of the Attorney General of Nepal 2016.

reach to the court as the power to file criminal cases lies on the hand of the prosecutor. In the fiscal year 2008-09, the district prosecutors' offices decided to file 9420 cases and not to file 177 cases. In the fiscal year 2009-10, these offices decided to file 14,142 cases and not to file 484 cases. These statistics reveal that there is significant amount of the cases, which do not go to the court. In such cases, victims cannot claim compensation since a private civil suit is not available under existing legal framework.⁷⁴

Compensation for civil wrong was firstly incorporated in Citizens Rights Act 1955, which grants citizens of Nepal with various civil rights, including the right to equality before the law, the freedom of speech, the freedom of association, the freedom of religion and the right to security of private residences.⁷⁵ It also prohibits discrimination based on religion, caste, community, sex or other grounds, the employment of persons against his consent and the employment of children below the age of fourteen years in a factory, mine or any "risky" job.⁷⁶ If any of these rights are violated, the aggrieved person can also be compensated as determined by the Court.⁷⁷ However, the full bench of the Supreme Court limited the scope of the claim only to the person who has been directly affected, not the family members.⁷⁸

The Civil Rights Act largely remained ineffective for 30 years after the King Mahendra suspended the constitution, dismissed the cabinet, dissolved the elected parliament and instituted party-less Panchayat system, banning all fundamental rights of the citizens in December 1960. Therefore, civil and political rights enshrined under the Citizens Rights Act were rarely invoked. Nevertheless, non-political nature of the rights remained active during the three-decade long party-less Panchayat system.

The concept of compensation for human rights abuses only emerged after 1990's people's movement.⁷⁹ For example, two unique laws were drafted in 1996: the Torture Compensation Act (TCA) 1996 and National Human Rights Commission Act (NHRC Act) 1997. Under the TCA, a victim of torture can file a compensation claim in the District Court within 35 days of being subjected to torture or within 35 days from the date of release from detention.⁸⁰ However, if the victim has died or is not able to file a case for any other reason, any adult family member of the victim or his/her lawyer can file a complaint.⁸¹ This was a new development as it recognized the beneficiary other than the direct victim. The narrow time limit remains a key limitation of this Act.

74 Report of the AG Office, available in Nepali language at: http://ag.gov.np/wp-content/uploads/2016/01/OAG-Nepal-annual-report_67_68-Nep.pdf

75 Sections 3, 6 and 10 of the Citizen Rights Act, 1960.

76 Section 4, 13 and 14, of the Citizen Rights Act, 1960.

77 Section 17 (3) of the Citizen Rights Act, 1960.

78 *Dorna Samsher Jabara vs. Indian Airlines Corporation*, Nepal Law journal 1966 (2022 BS), issue 1, decision no 301.

79 The 1990 People's Movement (*Jana Aandolan I*) was a multiparty movement in Nepal that brought an end to absolute monarchy and the beginning of constitutional democracy. It also abolished the Party-less Panchayat system.

80 Section 5 (1) of the Compensation relating to Torture Act.

81 Section 5 (2) of the Compensation relating to Torture Act.



Focus group meeting with some injured victims in Bardiya, Nepal – Photograph by Luke Moffett

Nevertheless, after the conflict intensified, immediate assistance also included people victimized by security forces. For example, financial assistance was also provided to those who were killed because of the recklessness of the security forces while using the force or extracting the information during interrogations.⁹⁸ Similarly, the financial assistance also covered the civilian who were killed in crossfire because of them being used by the Maoists as human shields.⁹⁹

4.3 Post CPA reparative measures

The key sources of reparative measures in post conflict Nepal are the provisions of the CPA in relation to relief, compensation, rehabilitation and provision of the Interim Constitution, which promised various reparative measures. Following up the provisions of the CPA and Interim Constitution, the Government of Nepal took a number of measures that can be viewed as a reparative measure. This section briefly discusses those measures and highlights the emergent complexity caused by multiple schemes of compensation and redress.

On 26 February 2007, the Council of Ministers decided to provide financial assistance to IDPs. Following up the decision, the government further institutionalized 'financial assistance' to IDPs by formulating a guideline.¹⁰⁰ In order to access the

assistance IDPs were required to register themselves in respective Districts Identification Committee under the Chief District Officer (CDO) who would determine IDPs and recommend for assistance. The objective of financial assistance to IDPs was to facilitate their return home.

98 In Maina Sunuwar case the court Marshal found security personnel guilty of death because of recklessness during the interrogation and recommended for compensation. Decision of Court Marshal on 8 September 2005.
 99 On the basis of the interview with the family member of *Pourasa Aahir* from *Ganeshpur* village of *Gulariya* Municipality.
 100 Guideline to Provide Relief and Facility to the Displaced Persons due to Conflict, 2007.

Under this program, travel cost, NPR 300 to NPR 1000 (USD \$3-10), NPR 60 (USD \$6) as food allowance up to two months, NPR 5000 (USD \$50) for home maintenance or NPR 10,000 (USD \$100) one-time payment for constructing house, NPR 1000 (USD \$10) per child one-time payment to each child of displaced person as an educational support was included. Further, this scheme also included one-time loan without interest of NPR 10,000 (USD \$100) for buying agricultural seeds and NPR 10,000 (USD \$100) for buying tools for agriculture, business or a small industry. That loan required to pay back after the 5 years.¹⁰¹ Under this program, until last fiscal year (2016-17) a total of 79,571 IDPs have benefited and the total amount NPR 24,01,44,000 (USD \$2,401,440) has been spent.¹⁰² This is an ongoing program funded by the Nepal Peace Trust Fund comprising a range of international donors and the Nepalese government. As a result the total number of beneficiaries and total amount of expenditure will depend upon the end of the program. IDPs were only eligible for payments if they wish to return home, with no alternative compensation provided for those who remain.

While significant numbers of IDPs seem to have returned to their home, many other IDPs are still reluctant to return to their home as their confiscated property has not yet been released by the Maoists. Neither the government nor the TRC has taken any efforts to return those confiscated properties. In order to develop and implement administrative reparation measures, the government, formed a task force on 10 June 2007, to collect data of conflict victims, their families and infrastructure damaged during the conflict.¹⁰³ The task force have identified ten different categories of the conflict affected persons, that includes dead, disappeared, IDPs, property lost, injured, or disabled, abducted, illegally detained, orphan and those required medical treatment. The task force documented the death of 18,030 persons, 1,613 disappeared, 80,222 IDPs, 9,820 disabled, 3,893 abducted or forcibly kidnapped, 2,094 illegally detained, 689 Orphan Children and, 1,735 injured requiring medical assistance.¹⁰⁴ Further details of how injured victims are assessed are discussed below. Victims of torture and sexual violence were largely left out as the guideline had not defined this category of recipients. The members of the taskforce informed the author that the Terms of Reference given to them only mentioned those category of victim excluding others.

The methodology of the collection of the data; however, remained controversial and non-transparent. According to the members of the task forces,¹⁰⁵ the Chief District Officer (CDO) was responsible to compile the information from various sources, including the application of the victim. The CDO office, after receiving the information, was supposed to send the list to the task force. Upon receiving the data from the CDO office, the task force would verify the information and submit its report to MoPR. After collecting data, the government formulated a policy document

101 Guideline to Provide Relief and Facility to the Displaced Persons due to Conflict, Sec 2 and 5
 102 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.
 103 For this purpose, five task forces have been formed. First task force was established in June 10, 2007– September 11, 2008; Second October 27, 2008– June 25 2009; third August 26, 2009 – June 25, 2011; fourth October 25, 2011 – July 14, and fifth January 19, 2015– April 18 2015. MoPR, Ten Years of Peace Process in Nepal, (2006 – 2016), Page 80.
 104 MoPR, Ten Years of Peace Process in Nepal, (2006 – 2016), Page 83.
 105 Interview with Bhoj Raj Timilsens, member of the fifth task force, on 12 December 2017.

detailing the reparative measures, defining the beneficiary and establishing a process to access such benefits. It has named as 'Standard on Financial Assistance and Relief' (Standard).¹⁰⁶

On 10 March 2008, following up the Standard, the government decided to provide NPR 100000 (USD \$1,000) as a financial assistance to the kin of those killed. The government further elaborated the distribution process of the assistance by introducing a procedural guideline detailing the process and mechanism to distribute assistance to those who were killed during the conflict.¹⁰⁷ Under this scheme, in 2008, the government provided NPR 100,000 (USD \$1,000) as financial assistance to the kin of deceased.¹⁰⁸ The amount has been increased up to NPR 100,000 (USD \$10,000) by the subsequent amendments in the Guideline.¹⁰⁹ Under this program, until last fiscal year, total 14,418 families have been benefited and total NPR 14,41,80,00,000 (USD \$144,180,000) was spent.¹¹⁰ During the operation of this scheme it has been funded by both World Bank aid and by the Nepalese government directly.

Many family members of the disappeared persons registered them as dead in order to benefit from the financial assistance.¹¹¹ This was particularly problematic for victims, as they had to falsify the information in order to benefit from scheme. The authorities accepted these claims without thinking about potential adverse impact on victims right to truth, justice and reparation in the future. The inheritance law does not envision the situation of disappeared. Therefore, the family members of the disappeared cannot transfer the property, however, the section 32 of the Evidence Act presumes a situation where someone is continuously not in contact for 12 years can be presumed to be dead, thereby allowing the transfer of property.¹¹²

Family members of disappeared persons demanded for financial assistance on a par to the assistance provided to deceased. Their demand for reparative measures was further supported by the Supreme Court ruling, which has specifically highlighted the government's obligation to provide 'immediate relief to victims of enforced disappearance'.¹¹³ The Maoist Prime Minister Puspa Kamal Dahal 'Prachanda' led government decided to provide a similar amount of money to the family of disappeared persons.¹¹⁴ In order to implement the decision, the government adopted

106 Standard on Financial Assistance and Relief to the Conflict Victims (Standard), 2008.

107 Guideline to Provide Financial Assistance to Kin of the Deceased, 2008.

108 Decision of Council of Ministers on March 10, 2008 and Directives on Financial Support to Nominee of victims (First Amendment Directives, 2068), 2065.

109 Guidelines for Providing Financial Support to Nominees of Victims (First Amendment), 2068, Sec. 17

110 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

111 OHCHR and ICTJ, From Relief to Reparation, Hearing the voice of the Victims (2011), p21. Available at <https://www.ictj.org/sites/default/files/ICTJ-NPL-Relief-to-Reparations-Report-2011-English.pdf>

112 Beyond Relief: Addressing the Rights and Needs of Nepal's Wives of the Disappeared, ICTJ, August 2013 <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Nepal-WivesofDisappeared-2013.pdf>, p7.

113 Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v. the Government of Nepal, Nepal Law Journal 2007, Issue 3, decision no 7817.

114 Decision of the Council of Ministers was made on November 5, 2008.

a guideline detailing the process and mechanisms for the assistance.¹¹⁵ Later on the amount has been increased to NPR 100,000 (USD \$10,000).¹¹⁶ Under this program, until last fiscal year, total 1530 families of disappeared persons have benefited and total NPR 1,53,00,00,000 (USD \$15,300,000) had spent.¹¹⁷ Yet this disbursement over time meant that the reparative effect was weakened or spent on accessing basic services, as in the beginning the government provided NPR 100,000 (USD \$1,000), then NPR 200,000 (USD \$2000), another NPR 200,000 (USD \$2,000) and recently it increased the assistance additional NPR 500,000 (USD \$5,000) to the family members of deceased and disappeared.

These monetary payments also caused family tensions and prevented victims from investing them in a new business or house to support themselves in the long term.¹¹⁸ As one wife of disappeared person explained,

"The relief amount that was provided in instalment basis, that was like 75% I received and 25% my husband's family received because initially they were receiving the relief money from the government, but I filed a case with the state for the property, after that I started to receive the money. So, I received almost 75% and they received 25%, I had to fight for almost four and a half years to get property from the family members, that was in my husband's name. ... it was paid in like sometimes they paid 1,000 dollars, sometimes 500 dollars and sometimes 200 dollars as well. [We] were not able to like invest that in some kind of business, if they would have had received that money like one million one time, so maybe that could bring change in my life."¹¹⁹

Other wife a disappeared person shared similar views on the relief payments, which she spent on,

"immediate medication. Some was spent for my child's education and some for the household work. But if they had given all the money in one instalment that would be even better, but since it was given in instalments, it was spent on some small work and the relief money is finished."¹²⁰

The motivation for the government to introduce financial assistance to only two categories of victims, in the beginning of the administrative reparative measures, seems to have come from political pressure rather than victim-centric approach. Most of the victims covered under the assistance, were somehow perceived to be affiliated with either Maoist or ruling Nepali Congress party or family members of security personnel. Nevertheless, the government further extended the administrative reparative measures to other categories of conflict victim considering the Standards and the Supreme Court's directives.

115 Guideline to Provide Financial Assistance to the Kin of the Disappeared Persons, 2008, . as He may deem necessary"raft. CERD, Article 2 of CEDAW, Article 2 of CRC. . Decision no 9061. as He may deem necessary"raftthe Disappeared Persons, 2008.

116 Directives on Providing Relief to the Kin of Disappeared Person (First Amendment), 2068, Sec. 15.

117 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

118 Interview N03, Kathmandu, April 2018.

119 Interview N15, Kathmandu, April 2018.

120 Interview N22, Gulariya, April 2018.

The Supreme Court in many instances instructed the government to take appropriate measures to address the need of the victim without discrimination.¹²¹ In *Rajendra Dhakal* case the Supreme Court reiterated Nepal's international legal commitments to ensure remedy to not only victims of enforced disappearances, but their families and relatives, as well as victims of other gross human rights violations.¹²²

This decision required the government to take measures to provide immediate relief to the victim of human rights violations. Therefore, in January 2010, much broader administrative reparative measure has been introduced by adopting a Citizens' Relief, Compensation and Financial Assistance Procedure (CRCFAP)¹²³ This procedure extended to provide compensation, relief, and financial assistance to victims of political and other forms of violence after the CPA.¹²⁴ The rationale behind the inclusion of victim of political violence was to address the need of the victim of *Madhesh* Movement¹²⁵ and other political or identity-based movements. The government signed a number of agreement with agitating groups agreeing with their demand, which included, among other, compensation and relief to the victims of such movements.¹²⁶ The extensions of reparation eligibility are therefore a result of political negotiation and patronage, rather than a rights based framework. Again as a result victims of torture and sexual and gender based violence were left out from the scope of the scheme.

The administrative reparative measures taken after signing the CPA, has been named among some donors and INGOs as an 'Interim Relief Program' (IRP), which does not exist in any official documents. Therefore, this paper does not use the term 'IRP' rather it uses the administrative reparation measures or CRCFAP. The measures, including what has been already discussed, covered the following assistance and relief:

121 *Bhim Prakash Oli v. the Government of Nepal*, Writ no. 3394 of 2005, date of the decision February 10, 2006; *Bhojraj Timilsena v. Nepali Congress*, writ no. 0920 of 2007, decision date December 27, 2007.

122 *Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v. the Government of Nepal*, Nepal Law Journal 2007, Issue 3, decision no 7817.

123 Citizens' Relief, Compensation and Financial Assistance Procedure, 2010.

124 The financial assistance and relief program were primarily designed to address the conflict victims (1996 to 2006), however the 2010 Citizens' Relief Guideline included victim of political violence or social movements who have raised their voice for their demand to be addressed by the ongoing peace process.

125 *Madhesh* is the synonyms of *Terai* – the southern boarder of Nepal residing about 50% of Nepal's population covering 22 out of 77 districts. The initial agenda of *Madhesh* movement includes denial of citizenship. The later part of the movement was more focused on identity and autonomy which led to Nepali peace process include federalism where the demand for One-*Madhesh*, One-Provence became very controversial. Many people were died and injured during the movement. Therefore, the government has introduced this Procedure to include them into the government's reparation scheme.

126 For example, the agreement between the Government of Nepal and Madheshi Jan Adhikar Forum Nepal on August 30, 2007; Agreement between the Government of Nepal and Nepal Federation of Indigenous Nationalities and Joint struggle Committee of Indigenous Nationalities on August 7, 2007; Agreement between the Government of Nepal and Indigenous *Tharu* Community and Nepal Federation of Indigenous Nationalities, March 14, 2009; Agreement between Tharu Joint Struggle Committee, May 23, 2012.

4.3.1 Financial support to single women

Under CRCFAC, the widows and wives of disappeared persons were provided additional one off assistance amounting to NPR 25,000 (USD \$250) as livelihood support.¹²⁷ Until the end of the 2017 a total of 4,649 widows have received these benefits, which amounts, NPR 11,62,25,000 (USD \$1,162,250) and total 652 wives of the disappeared persons have received NPR 1,63,00,000 (USD \$163,000) under this category.¹²⁸ Affected women lose the benefit if they remarry. The wives of disappeared and widows have to produce marriage or relationship certificate and a recommendation from local authority of a single women status. One widow felt that the relief paid was not reparations as,

“it is kind of begging, it is kind of a donation that they give so it's like selling the honour of the person and getting the money. So, the self-respect is not there.”¹²⁹

Without the clarification of the fate of those who are disappeared and the return of their remains, many victims we spoke to felt between life and death unable to process the 'ambiguous loss'.¹³⁰ One victim spoke about how she cannot leave her home for more than five minutes for fear of missing her husband, who was disappeared over a decade ago, returning and knocking on the door without her there.¹³¹

4.3.2 Scholarship to victims' children

CRCFAP also included scholarship scheme to the children of the persons who were killed, disappeared and disabled above 50% during the conflict. The CRCFAP had the provisions to provide ongoing scholarship up to three children below the age of 18 years.¹³² As the scholarship scheme was limited to only three children, it had barred many conflict-affected children to be benefited from the program.

Nevertheless, acknowledging these gaps, the government made fourth amendment in 2017 and removed the ceiling of providing scholarship only to three children.¹³³ In addition, there had been an increment in an amount of scholarship with NPR 12,000 (USD \$120) for primary level (Grade 1-5), NPR 14,000 (USD \$140) for Secondary level (Grade 6-8), medium level (Grade 9-10) with NPR 16,000 (USD \$160) and Higher medium level (Grade 11-12) with NPR 18,000 (USD \$180) to be provided. Previously, this amount was NPR 10,000 (USD \$100), NPR 12,000 (USD \$120), NPR 14,000 (USD \$140) and NPR 16,000 (USD \$160) respectively.¹³⁴

127 Citizens Relief, Compensation and Financial Assistance Procedure, 2008.

128 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

129 Focus group N28, Kathmandu, April 2018.

130 Simon Robins, *Ambiguous Loss in a Non Western Context: Families of the Disappeared in Postconflict Nepal*, *Family Relations* 59(3) (2010) 253-268.

131 Focus group N21, Bardiya, April 2018.

132 Citizens Relief, Compensation and Financial Assistance Procedure, 2008, Sec. 1.2

133 Fourth amendment of the Citizens Relief, Compensation and Financial Assistance Procedure, 2008.

134 Citizens Relief, Compensation and Financial Assistance Procedure, 2008.

But number of beneficiaries and the total amount spent for this scheme is not available as this program was implemented by the district education office which does not directly report to MoPR.

4.3.3 Medical Expenses

CRCFAP also included medical expenses for physically injured due to the armed conflict.¹³⁵ This scheme only provides reimbursement of the medical cost which was done in government hospital, which excludes many victims of the conflict who have received medical treatment at the private hospital or outside the country.¹³⁶ Further, this scheme does not address the need of the injured victims who needs to have regular medical assistance. But number of beneficiaries and the total amount spent for this scheme is not available as the district health office, which does not directly report to Ministry of Peace and Reconstruction, implemented this program.

4.3.4 Financial Support to Disabled

CRCFAP included financial assistance to the disabled persons due to conflict. This scheme has categorized disability on a percentage basis. For example, a person with 100% disability is entitled to receive NPR 200,000 (USD \$2000) as one-time payment. Other disabled persons less than 100% disabled would get the assistance as per the percentage of their disability calculating NPR 200000 (USD \$2,000) as one hundred per cent.¹³⁷ Under this scheme, till date, 8,191 persons with disability have received the benefits. The total amount NPR 48,24,04,000 (USD \$4,824,040) has been spent so far.¹³⁸

The procedure for determining the percentage of disability is not transparent. A technical committee comprising of three members is stationed in Kathmandu, on the basis of the documents forwarded by CDO, without physically examining the persons with disability, determines the disability percentage. The technical committee has recently been reformed considering complains made by victims. It provides detail criteria for the determination of percentage and also establishes the process of determining such percentage of disability.¹³⁹ The government has introduced an additional procedure to review the disability percentage on five yearly basis. Section 4 of the procedure forms a review committee under the chairmanship of CDO which would review the disability in every five years on the basis of the report prepared by technical committee under section 6 of the Procedure. The review committee amends the percentage on the ID card of the victim as determined by the technical committee. The disabled victims have to apply to the review committee within 6 months for the date of public notice of the government of Nepal.

135 Citizens Relief, Compensation and Financial Assistance Procedure, 2008, Sec. 2.2,2.2.3, 2.4, 2.5, 2.6, 2.7 and 2.8, 11 Citizens Relief, Compensation and Financial Assistance Procedure, 2008, Sec. 2.9.

136 In many cases there was a threat to do the medical treatment at the community level, hence many people residing in *Terai* had undergone medical treatment in India. The guideline do not speaks about this situation.

137 Citizens Relief, Compensation and Financial Assistance Procedure, 2008.

138 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

139 A separate Procedure has been adopted by the government on May 22, 2017, named as 'Procedure relating to revision and determination of the percentage of injured and disabled persons during the conflict, 2017'.

The review committee will decide on the basis of recent medical report and standards set in the review guideline.

There are also questions about sustainability of such support and service provision for those with long term injuries. One victim who lost his leg in a bombing had received two prosthetics, but were now broken and he was unable to obtain a new one and so was going to combine the two he has so he can still have some mobility even though it is painful for him.¹⁴⁰ Another victim who had dozens of pieces of shrapnel in his body, had received some money from the government, but it was all spent on pain medication and he has not been able to access specialist surgical services to remove the bullets in his body.¹⁴¹

4.3.5 Compensation for damaged property

CRCFAP includes compensatory provision for damaged property during the conflict.¹⁴² This includes damages of government rented personal house, personnel property damaged by parties to conflict, farmers deprived from farming due to armed conflict, damage of private vehicle used by security forces, and vehicle damaged during the strikes and blockade called by conflicting parties during the conflict. The amount of compensation is determined by the recommendation of 'Damage Evaluation Committee' formed at the local level chaired by CDO. Under this scheme, until the end of 2017, a total 9,294 persons have received compensation for the damage of private property and the total amount is NPR 34,19,56,600 (USD \$3,419,566).¹⁴³

4.3.6 Assistance for incommunicado detention

This scheme covers incommunicado detention, kidnapping and hostage taking, to some extent, but fails to include illegal detention. Under this scheme NPR 25,000 (USD 250) has been provided as one-time payment for those who had been kept more than 30 days in incommunicado.¹⁴⁴ Under this scheme, a total 3,142 persons have received the benefit, which amounts NPR 14,14,75,000 (USD \$1,414,750) until the end of 2017.¹⁴⁵

4.3.7 Skill Development Trainings

The scheme provides an opportunity for the victims to get involved in skill development trainings enabling them to seek employment and income generation. These opportunities are available through the Ministry of Industry, Ministry of Agriculture and Cooperatives, Ministry of Labour and Transportation services, Ministry of Education, Ministry of Finance and Ministry of Peace and Reconstruction.¹⁴⁶

140 Focus group N21, Bardiya, April 2018.

141 Ibid.

142 Citizens Relief, Compensation and Financial Assistance Procedure, 2008

143 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

144 Citizens Relief, Compensation and Financial Assistance Procedure, 2008.

145 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

146 Citizens Relief, Compensation and Financial Assistance Procedure, 2008.

Under this program, till date, total 14,718 conflict victims from 54 Districts have been benefited¹⁴⁷ and total NPR 62,81,72,000 (USD \$6,281,720) was spent.¹⁴⁸

4.3.8 Assistance to children

This scheme supports the children of deceased and disappeared or orphan children with NPR 5000 (USD \$50) monthly allowance as a livelihood support up to the age of 18.¹⁴⁹ This scheme aims to cover housing, food, nutrition, medical treatment, clothing, and stationary expenses.¹⁵⁰ A Rehabilitation committee headed by the CDO implements the assistance.¹⁵¹ Under this program total 758 children have been benefited. NPR 17,84,50,000 (USD \$1,784,500) has been spent till date.¹⁵²

4.3.9 Assistance to victimized perpetrators

The administrative reparative measures treat equally all kinds of victims because of the definition of a conflict victim. Some of the people killed during the conflict may qualify as ‘victimized perpetrators’ since many incidents of killing and physical injuries occurred either as reprisal or as revenge. While the administrative reparative policy has not made any distinction or has not defined this category of victim separately, the members of the security forces who were killed during the conflict were excluded from the benefit under the administrative reparative measures after receiving NPR 100,000 (USD \$1,000) in the beginning because of a separate financial scheme to the family members of security personnel and government officials who had been killed by the Maoists.

Though the administrative reparative measures included victimized perpetrator and the definition of victim in the name of “conflict victim” and the first instalment of NPR 100000 (USD 1000\$) was provided, the subsequent scheme did not include them as a beneficiary while distributing the benefits. Nevertheless, there had been a rehabilitation and reintegration package to the ex-combatants – though not fully complied all elements of DDR in international best practice. For example, the UNMIN registered 32,250 ex-combatants in the first phase of the registration process. Among them 8640 did not appear in the second phase registration process, hence, automatically disqualified from the scheme. Similarly, 2973 ex-combatants were found below the age of 18 thereby declared as disqualified combatants. Finally, the UNMIN registered 19602 ex-combatants to be included in the reintegration and rehabilitation package.¹⁵³

The Maoist and the government of Nepal signed Seven Point Agreement on November 1, 2011 detailing the rehabilitation and reintegration package where they agreed to reintegrate 6500 ex-

147 MoPR “10 Years of Peace Process in Nepal (2006 - 2016), Vol. 8, P. 92.

148 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

149 Procedure on Re-establishment Programs for Children who have lost their Mother- Father, 2011, Section 3.

150 Ibid.

151 Ibid. Section 5.

152 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

153 Govinda Sharma Bandi, Nepal’s Peace Process: an Unfulfilled Promises, Nyayadoot, Special Edition, volume .. March 2018, page 72.

combatants in Nepal Army by relaxing the criteria (education, age, physical fitness, marital status etc.) for the appointment procedure of Nepal Army. The parties offered others to give an option of voluntary retirement with NPR 500000 (USD 5000) to 800000 (USD 8000) according to their previous position in ‘People’s Liberation Army’ (PLA). Others who wanted to be reintegrated in the society were offered vocational trainings, seed money for local industries and so on.¹⁵⁴ But, only 1400 ex-combatant were reintegrated in Nepal Army. The remainder went for voluntary retirement scheme with significant compensation.¹⁵⁵ However, because of the delay in the process some of the ex-combatants left the cantonments and went to Gulf states for employment and lost the opportunity to be benefited from the integration package. Similarly, the government and Maoist also signed an action plan for the discharge of the disqualified ex-combatants in order to reintegrate them in the society. The package included education and skill training which was supported by United Nations Children’s Fund, UN Population Fund, UN Peace Fund supported by Norway, Denmark, UK, Switzerland and Canada.¹⁵⁶

Apart from this, the TRC has attempted to address the victimized perpetrator by forming a committee to look into the comparative practices and international standards so as to take a decision whether to include unarmed members of security forces as victims in the reparation program¹⁵⁷ In addition, some reparative measures particularly targeted to Maoist combatants seem to fall under the category of victimized perpetrator. There remains significant potential for both the TRC and CoID to more comprehensively address this issue.

4.3.10 Former combatants with disability

In 2011, Maoist leader, Babu Ram Bhattarai led government introduced and implemented a program targeting former Maoist combatants who were injured and disabled.¹⁵⁸ This scheme divides injured and disabled in four categories - Special Class (76-100% disability), First Class (51-75 % disability), Second Class (26-50% disability) and Third Class (up to 25% disability).¹⁵⁹ A special program was launched establishing care centers to provide food, shelter, health care etc. for those falling under special class.¹⁶⁰ The scheme also addresses those who do not wish to stay in care centers by providing NPR 6,200 (USD \$62) to those first class (51-75 % disability) and NPR 12,400 (USD \$124) for special class (76-100% disability), per month.¹⁶¹

154 Ibid.

155 Ibid

156 Tone Bleie and Ramesh Shrestha, DDR in Nepal: Stakeholders Politics and Implication for reintegration as a process of disengagement, available at https://uit.no/Content/307292/Nepal_Report_Final.pdf

157 The TRC formed a 13 members Committee headed by Madhavi Bhatta Parajuli on 10 November 2017. The Committee comprises three joint secretary of Ministry of Defense, Ministry of Home and Ministry of Law, four representatives of Security forces, conflict victims and secretary of the TRC. The Committee is mandated to submit it’s report within 35 days. <http://annapurnapost.com/news-details/83738>

158 Directives on establishment of Re-establishment and Care for injured militants of Maoist and disabled army of armed Conflict, Historical People’s Moment and *Madesh* Moment, 2011.

159 Ibid.

160 Ibid.

161 Ibid, Section 3.



Furthermore, the scheme also included free medical service to the injured or disabled combatants. MoHP is responsible for necessary arrangement for abovementioned facilities.¹⁶²

The beneficiary of this scheme includes former combatants, members of the security forces, civilians who were injured in people's uprising and *Madhesh* Moment.¹⁶³ Under this program, total 744 persons with disability have been receiving this allowance, which amounts, till date, NPR 33,53,00,200 (USD \$3,353,002).¹⁶⁴ In addition this scheme includes educational scholarship to the injured and disabled combatants below the age of 25.¹⁶⁵ A central level committee under the chairmanship of Minister for Peace and Reconstruction is responsible to implement, coordinate or seek necessary resources for this program.

nterim Relief in Nepal, 2010, 4) available at: A study of the Needs and Aspirations for Reparative Justice of Victims of Confl¹⁶⁶ Though, the victims of people's uprising and political violence also seem to have benefited from inclusion in this program as part of the government's negotiation with different agitating stakeholders it was primarily designed to address the disabled former combatants.¹⁶⁷

4.3.11 Assistance to Pregnant Combatants

In 2012, the government adopted a guideline to provide special facility to pregnant former Maoist combatants and children of former Maoist combatant of less than five years. This guideline primarily focuses on those former combatants who voluntarily left the force or willing to rehabilitate into society. This scheme covers monthly allowance for a year of her pregnancy and health and nutrition allowance to the child until age of one year.¹⁶⁸

4.3.12 Issuance of identity card

In 2012 the government adopted a guideline to issue identity card to the victims who had been killed or disappeared during the political conflict.¹⁶⁹ However, the Supreme Court in August 2015 nullified the guideline stating that it had failed to recognize the dignity of the victims.

162 Ibid, Section 5.

163 Directives on establishment of Re-establishment and Care for injured militants of Maoist and disabled army of armed Conflict, Historical People's Moment and *Madesh* Moment, 2011.

164 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

165 Section 8 of the Directives on establishment of Re-establishment and Care for injured militants of Maoist and disabled army of armed Conflict, Historical People's Moment and *Madesh* Moment, 2011

166 Ibid.

167 Preamble of the Guideline to Rehabilitate, injured and disabled former Maoist combatant, injured and disabled persons of armed conflict, People's Movement and *Madhesh* Movement 2011.

nterim Relief in Nepal, 2010, 4) available at: A study of the Needs and Aspirations for Reparative Justice of Victims of Confl

168 Guideline to provide special facility to Pregnant former combatant and children of former Maoist combatant less than 5 years, 2011.

169 Guideline to Issue Identity Card to the Victims who have been Killed or Disappeared during the Political Conflict, 2013.

The Supreme Court held that the provision of the guideline treated equally the perpetrator and victim, whereas victim are entitled to right to an effective remedy and perpetrator to be brought to the justice. Further, the court said that, 'putting both on the equal footing and providing similar benefit undermines victim's dignity'.¹⁷⁰ The Supreme Court's finding makes it clear that victim and combatant do not enjoy the same treatment. However, the administrative measures tend to address both on a equal basis in case of killing and physical injury.

4.3.13 Psychosocial Counselling Service

In 2013, the government adopted another guideline relating to psychosocial counselling service to conflict victims.¹⁷¹ This guideline has been developed in collaboration with IOM and implemented with the financial support of the Nepal Peace Trust Fund (NPTF) established in 2007 to support Nepal's peace process. This program was conducted in 10 districts.¹⁷² Under this program 14197 persons have receive orientation on psychosocial counselling, 917 have received psychosocial counselling and 17 persons have received special treatment service. Total NPR 18,98,00,000 (USD \$1,898,000) spent.¹⁷³

4.3.14 Implementing mechanisms

On 25 April 2008, the government has established Relief and Rehabilitation Unit under the MoPR to implement above discussed administrative reparative measures. The unit is mandated to distribute financial assistance and relief to victim as per the procedures, guideline and standards. The unit was closely working with the CDO Office, which was the main implementing mechanism at the district level.

4.3.14 Involvement of Donors

While the initial support (NPR 100,000 (USD \$1,000)) to the deceased and disappeared had been supported by the World Bank, the government lunched the administrative reparative measures from its own budget. The NPTF has also been involved in the implementation of some of the scheme under the CRCFAP.

4.4 Reparation under TRC

The TRC Act defines reparation as "compensation, facility or concession".¹⁷⁴ Under this Act, the Commissions are mandated to design reparative measures and make recommendation in individual cases including "compensation, restitution or rehabilitation or "any other appropriate

170 *Suman Adhikari et al v. Prime Minister and Council of Ministers*, Nepal Law Journal 2016, Issue 6, Decision no 9612.

171 Guideline relating to provide Psychosocial Counseling Service, 2015.

172 Jhapa, Morang, Chitwan, Makwanpur, Kaski, Gorkha, Rukum, Palpa, Kailali, and Kanchanpur.

173 Data of Relief and Rehabilitation Unit of Ministry of Peace and Reconstruction.

174 Section 2(e) of the TRC Act.

arrangement as per necessity of the victim.” Reparation measures are further detailed as free education, health-care facilities, skill-oriented training, loan facilities, arrangements of habitation, employment facilities, and other appropriate measures.¹⁷⁵ Additionally, the commissions are also mandated to recommend for return of seized or confiscated property and provide compensation for damaged caused by such seizure and confiscation.”

The Commission also has discretionary power to determine amount of compensation. Up on the written request of the victim, the commission could recommend to the government to provide compensation up to NPR 300,000 (USD \$3,000) to the victim.¹⁷⁶ However, in case of failure of Commission to recommend for reparation, victim will have no choice as there is no other law that allows the victim to claim reparation. Hence, the reparation has not been recognized as a right of victim. Furthermore, the TRC Regulation limits the scope of the reparation by determining amount as Compensation up to NPR 300,000 (USD \$3,000). It could put serious threat on the right to full and effective reparation of the victims. At a minimum the TRC may offer victims some acknowledgement of their suffering and identify institutions and organisations responsible, while this is part reparations, it is not enough by itself to effectively remedy their harm.¹⁷⁷ From engaging commissioners in the TRC, there are big expectations for it to deliver truth and recommendations for reparations, but it has limited funding and staff.¹⁷⁸ That said there is space and interest to collaborate with the international community and donors to facilitate the implementation of their recommendations.

175 Section 23(2) of the TRC Act.

176 Section 24 of TRC Act.
Rule 32(1) of TRC Regulation, 2016.

177 “We Cannot Forget” Truth and Memory in Post-Conflict Nepal, International Center for Transitional Justice and Martin Chautari (2017), p19.

178 Interview N04, Kathmandu, April 2018.

5. Analysing reparation measures

5.1 Defining beneficiary

The ‘Standard on Economic Assistance and Relief to the Conflict Victims’,¹⁷⁹ defines conflict victim as the dependents (wife, husband, children, parents and other members of undivided family) of the individuals who were killed, internally displaced, abducted and disappeared and individuals who have been disabled, injured or lost their limbs, and individual or their family members, institutions who had lost their property by the parties of the conflict during the conflict.” The administrative reparation program has neither addressed the victims of sexual violence nor the victims of torture. However, physically disabled has received some relief through this scheme. There are a number of other guidance documents that similarly define victims:

- ▶ the Procedure to Provide Economic Assistance to the Kin of the Disappeared Persons, 2010;
- ▶ the Guideline to facilitate conflict victims to involve in employment or self-employment, 2010;
- ▶ the National Action Plan on the rehabilitation and reunification of the children affected by armed conflict, 2010;
- ▶ the Guideline to rehabilitate injured and disabled former Maoist combatants, injured and disabled persons in People’s movement and *Madhesh* movement, 2011;
- ▶ the Guideline to rehabilitate orphan children who lost their parents during the conflict, 2011;
- ▶ the Guideline to provide special facility to the pregnant former Maoist combatant and children of former Maoist combatants of less than five years, 2012; and
- ▶ the Guideline relating to psychosocial counselling service to conflict victims, 2015.

Similarly, the Directive to Distribute Identity Card to the Families of those Killed or Disappeared during the Political Conflict¹⁸⁰ identifies the beneficiary as the nearest relative of those killed or disappeared during the various political movements including the armed conflict. The definition failed to make distinction between “those killed or injured as a consequences of the legitimate use of force while acting as a combatants and those killed or injured as a consequences of human rights violation.”¹⁸¹ The term “killed” used in the definition also includes combatants and security personals who may not necessarily be victim of human rights violation and the violation of international humanitarian law. While these measures recognize the harm suffered by victim, putting members of the perpetrators organization under the same footing undermines victims’ dignity and their right to reparation.

179 Adopted by the Council of Ministers on 25 April, 2008.

180 12 February 2013.

181 ICTJ, Relief, Reparation and root causes of conflict in Nepal, available at: <https://www.ictj.org/sites/default/files/ICTJ-Nepal-Reparations-2012-English.pdf>



'Interview with victims of sexual violence in Bardiya, Nepal – Photograph by Luke Moffett'

The administrative reparative measures exclude a number of victims of human rights violations. For example, the victim of sexual and gender based violence and victim of torture are specifically omitted from the relief and reparation measures.¹⁸² Further the reparation measures also failed to address the situation of child soldiers, most of who were forced to join the People's Liberation Army (PLA).¹⁸³ For these victims they feel that their "voice is not being heard" by government institutions established to deal with the past and human rights issues, which has caused frustration and secondary victimisation.¹⁸⁴ For child soldiers there were demobilisation programmes, but training did not match their interests or needs, such as repairing electronic equipment.¹⁸⁵ Others were given a few hundred dollars to establish their own businesses, but given their lack of business expertise and missing education during the conflict many of these enterprises went bust, with many now working in factories, travelling to Gulf states for work or doing basic labour meaning they are living in poverty, as they are unable to return to the home communities, due to stigma and lack of opportunities.¹⁸⁶

182 The victim of sexual and gender based violence and torture victim have approached to the Supreme Court for the inclusion. The cases are still ongoing at the Supreme Court.

183 The reports vary on the numbers of child soldiers but general estimate is that around 30% of the PLA were minors. The UN sponsored verification process only recognized 19602 out of 31000 former Maoist combatant were qualified and rest disqualified. Available at: <http://www.myrepublica.com/archive/38571/Release%20disqualified-combatants-now>

184 Interview with victim representative N14, Kathmandu, April 2018.

185 Interview with victim representative N14, Kathmandu, April 2018.

186 Interviews with N11, N14, N26 and N27, Kathmandu and Bardiya, April 2018. See also Simon Robins, Ram Kumar Bhandari and the ex-PLA research group, Poverty, stigma and alienation: Reintegration challenges of ex-Maoist combatants in Nepal, Berghof Foundation, May 2016.

187 Fourth amendment of the Citizens Relief, Compensation and Financial Assistance Procedure 2017 (2074) made on June 12, 2017.

188 Section 2(h) of the TRC Act.

189 ICJ, The right to a Remedy and to Reparation, gross human rights violation, a Practitioners' Guide (2006), p.42. available at: <https://www.icj.org/wp-content/uploads/2012/08/right-to-remedy-and-reparations-practitioners-guide-2006-eng.pdf>

Victims and civil society organisations continue to lobby the government authorities for the inclusion of excluded categories of victims in the reparation measures. The victim also approached the Supreme Court for this purpose. This compelled the government to incorporate victims of torture and victims of sexual (Gender based) violence in the definition of the conflict victims.¹⁸⁷ Nevertheless, these victims are yet to be listed as a beneficiary in various reparative measures enshrined in guidelines, directives and programs.

More precise definition of victim is found in the TRC Act. The Act defines the victim as: the person who died or suffered harm in the form of physical, mental or sexual violation or incurred financial loss and damage or detainee and his/her family as a result of gross violation of human rights in the course of armed conflict, and this term also includes the community which sustained severe adverse impact humanitarially, socially or communally as a result of gross violation of human rights.¹⁸⁸

The TRC Act relatively widens the scope of the beneficiary, however, it fails to recognize the indirect victims and the notion of collective victimization. The UN Principle on Reparation includes both the direct and indirect victim. It states that '[W] here appropriate, in accordance with domestic law, the term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in the distress and prevent victimization.' In Nepal's context, many reports have identified indirect victims such as relatives of the victims, witnesses, human rights defenders, lawyers and journalists, who have suffered harm during the conflict.

While the TRC Act recognizes affected community as victims, it fails to define the individual and the community as beneficiary who may have suffered or restricted in exercising their collective rights. International law recognizes a range of categories of group rights such as indigenous peoples' rights, right to self-determination, women's rights as a right of a community.¹⁸⁹ In these cases, they are also entitled to claim reparation collectively. Furthermore, the Act is not explicit in terms of defining some beneficiaries including victims of enforced disappearance and torture. Nevertheless, the TRC and CoID have recognized in their working procedure these victims as a beneficiary of reparative measures.

The family members of security personals have demanded to include the unarmed security forced personnel who were tortured and killed after taking into hostage by the Maoist in the definition of conflict victims.

187 Fourth amendment of the Citizens Relief, Compensation and Financial Assistance Procedure 2017 (2074) made on June 12, 2017.

188 Section 2(h) of the TRC Act.

189 ICJ, The right to a Remedy and to Reparation, gross human rights violation, a Practitioners' Guide (2006), p.42. available at: <https://www.icj.org/wp-content/uploads/2012/08/right-to-remedy-and-reparations-practitioners-guide-2006-eng.pdf>

There is still debate whether an unarmed personnel of the security force falls under the definition of conflict victims. In order to decide on this matter, the TRC has formed a 13 members committee headed by TRC member Madhavi Bhatta Parajuli.¹⁹⁰

The government also tried to address the need of disqualified combatants,¹⁹¹ including former child soldiers by allocating NPR 200000 (USD 2000) to each disqualified combatants.¹⁹² However, some victim and human rights advocates have criticized this. The issues have been brought to the Supreme Court by some of the victim arguing that the state is ignoring victim's right to remedy but providing assisting to those who may have been involved in human rights abuses. The Court in the initial hearing issued an injunctive order staying the distribution of the relief.¹⁹³ The final verdict of the court will have to consider whether disqualified combatants can be the beneficiary of the state's reparative measures or not.

5.2 Process of designing reparation measures

MoHA provided the initial financial assistance, during the conflict, on case-by-case basis and without any guidelines and procedures. The post CPA assistances (administrative reparative measures) are based on the standard, guideline and procedure adopted by the Council of Ministers. MoPR, with the consultation with Ministry of Finance and other line Ministries, led the process of designing reparation measures. While post CPA financial assistance and relief program seems systematic, there has not been meaningful participation of victim and other stakeholders.

Nepal's transitional justice process has been influenced by donor, civil society movements and victims' movement. During the negotiation of the CPA, civil society and donor played significant role which has led to include human rights and transitional justice concerns in the CPA. The provisions relating to truth seeking, reparation and relief to the victim, therefore, have been incorporated in the Constitution as well. However, in the standard setting such as developing the guideline and procedure for administrative measures and implementation phase the engagement of victim and civil society were largely ignored. Most of the guidelines and standards were developed by the bureaucrats with some assistance from donor community. The role of the civil society and victims limited in putting pressure to the government but not in providing inputs or any feedbacks to those policies. Nevertheless, the victim and civil society movement remains strong as they have formed a number of loose network such as Accountability Watch Committee (AWC), Conflict Victims' Common Platform (CVCP), Conflict Victims Society for Justice (CVSJ), Conflict Victims Committee (CVC) Bardiya, Impunity Task Force etc.

190 The TRC formed a 13 members Committee headed by Madhavi Bhatta Parajuli on 10 November 2017. The Committee comprises three joint secretary of Ministry of Defense, Ministry of Home and Ministry of Law, four representatives of Security forces, conflict victims and secretary of the TRC. The Committee is mandated to submit its report within 35 days. <http://annapurnapost.com/news-details/83738>

191 the UN mission to Nepal was mandated to verify the PLA who were confined in the UN monitored cantonments after the CPA. The role of the UN was to verify them whether they could be qualified as a combatants.

192 Annual budget of the government of Nepal 2016-17.

193 *Gyanendra Raj Aran et al v. the Prime Minister and Office of the Council of Ministers*, case no. 073-WO-0112, date of order August 24, 2016.

These networks continue to voice on the right of the victims to truth, justice and reparation. These organizations include all kinds of victims from both sides of the conflict. In addition, there are some victim organizations who are linked with political parties such as Society of Family members of Martyrs and Disappeared Warriors and Society for Orphan. Even these organizations join hands with other victims group who do not have any geographical or political lines, while fighting for their rights for reparation. However, they often get divided when it comes to demand for justice. In addition, the civil society and victim have strong connection with media and other stakeholders. Because of this human rights litigation as discussed in this report have been successful.

The TRC has formed seven-member committee on draft reparation policy.¹⁹⁴ However, it has not carried out any public consultations and the officials at the TRC seem reluctant to reveal the progress on the drafting of the reparation policy. The CoID, until writing this report, has not done anything to develop a reparation policy.

5.3 Shortcomings of the administrative reparation measures

While a comprehensive reparation program is yet to be designed, the administrative reparation measures, as discussed above, has played positive role to address victim's immediate need. However, it falls short of many other important components such as, upholding the victim as bearer of rights, which is key for any sustainable peace. Though the government collected data¹⁹⁵ on the conflict victims before implementing administrative reparation measures, but it was not enough to measure the choice of the victim and society so as to determine what assistance or relief would work better. Generally, it is desirable to compile information about the victims that may be important in designing and implementing reparation measures. Furthermore, any reparative measures required wider consultation and victim's participation. But, it was designed and implemented without participation of and consultation with the victims and civil society.

While, these measures enjoy some degree victim's cooperation and appreciation, these efforts seem to have guided by traditional compensation notion, rather than as a part of truth and justice initiative. Therefore, there is potential danger of these measures being abused to buy or silence the victim. The victim's movement in Nepal has been very strong and continues to demand justice. Because of victim's movement many reform in transitional justice process have been made. However, the government's repeated initiatives to increase financial assistance to the family members of deceased and disappeared persons, rather than developing a comprehensive reparation program, may jeopardize the issue of the criminal accountability.

Further, it also failed to take other measures which could further help to heal the wound or normalise the daily life.

194 A seven member committee under the convener ship of Madhavi Bhatta, member of the TRC was formed on June 25, 2017.

195 On June 10, 2007, a task force was formed to collect data of conflict victims, their families and infrastructure damaged during the conflict.



For example, the program has no scope to address major problem faced by the family members of the disappeared, such as the property hold by disappeared neither be sold nor transferred.¹⁹⁶ The measures could have scheme to issue a certificate of “absence of disappeared persons” which may be helpful to transfer or sell property, remarry or solve custody dispute of children, matrimonial or succession issue.

In addition, it excludes a certain group of victims of human rights violation who are entitled to receive reparations. For example, victim of sexual and gender based violence, victim of torture, victim of illegal detention and freedom of expression were not included.¹⁹⁷ Similarly, the issues of child soldier who have been disqualified during the verification process by the UNMIN are also excluded from the administrative reparative measures and the rehabilitation and integration process. They view themselves as a victim of human rights violation since they were recruited while they were minor. They have also formed a separate group and advocating for their rights for reparation.

Another shortfall of this measure is to make a distinction between the civilian victim and those who were killed in battlefield, i.e. combatants.¹⁹⁸ Because of this even the security personnel and the Maoist combatant benefited by the program on par with civilian victims who are protected persons under international humanitarian law. In addition, the need for differential treatment of child soldiers remains unappreciated in the current approach. Despite the commitment to deal with the past and set up institutions, such as the TRC, eligibility for groups such as child soldiers has been contested, with commitments to international law and transitional justice standards just considered ‘lip service’, with no serious commitment to remedy past violations.¹⁹⁹ One former child soldier, whose father was disappeared, said she “felt very bad” that she was not integrated within the army upon demobilisation, but has not received anything for losing her father and now wants to “forget all those things and start a new life.”²⁰⁰ Another former child soldier said that while he did not see himself as a victim, they should all be eligible for reparations for being used during the conflict in this way and provided with an apology, guarantees that it will not happen again and receive measures to meet their needs.²⁰¹

While the financial assistance to IDPs aimed to support them to return home, absence of a meaningful rehabilitation scheme within the program had an adverse impact on IDPs. Medical services, psychosocial counselling, and return of the confiscated property were absent from the scheme, which significantly lowered the quality of life of the returning IDPs. In addition, the financial assistance for medical expenses to the injured and disabled was very low and

196 ICTJ and CREHPA, To Walk Freely with Wide Heart, A study of the Needs and Aspirations for Reparative Justice of Victims of Conflict Related Abuses in Nepal (2014) available at: <https://www.ictj.org/sites/default/files/ICTJ-Report-Nepal-Reparations-2014.pdf>

197 On June 2, 2017 the government amended the Citizens’ Relief Guideline including these victims in the definition of victim. However, they are yet to receive any assistance.

198 The program paid equal amount of money up to NPR 100000 (USD \$1000) in the beginning to everyone who was killed during the conflict.

199 Interview with civil society actor N06, Kathmandu, April 2018.

200 Interview with former child soldier, N11, Kathmandu, April 2018.

201 Interview with former child soldier, N14, Kathmandu, April 2018.

required the victim to be treated in community or government hospitals which predominantly have poor medical and technical facilities to treat victims particularly those who had suffered from serious injuries. Also lacking is a psychosocial counselling component to help victims and affected communities to process the psychological trauma that disrupt their social interactions, wellbeing, health and work.

5.4 Implementation Challenges

The distribution of financial assistance and relief also seems complicated and troublesome. There have been many institutions that are responsible for distributing the assistance. In addition, victims are required to produce a number of documents along with the claim. For instance, for deceased, death certificate, relationship certificate and recommendation letter from local bodies, were compulsory. As the local bodies are highly political, it was very difficult for some of the victims to get those documents. If there had been a process to determine who the victims are, before the distribution of assistance or relief, the burden of proof would have been removed from victims. Similarly, victims were also required produce identity documents such as citizenship, birth certificate, and about seven people as witness to get the recommendation letter from the local body. In many parts of Nepal, and for many indigenous communities, it was particularly difficult, as they did not have these certificates. For poor and illiterate people, it was difficult to obtain statements from the required number of witnesses. Moreover, for women, it was compulsory to produce either marriage certificate or prove of having not re-married.

While the Relief and Rehabilitation Unit under MoPR was the principle body to distribute the assistance or relief, various agencies at the district level were responsible. As a result, a family that has overlapping multiple conditions of victimhood have to go through each of these procedures separately to access the different types of reparations. For example, the families of deceased and disappeared required to apply to the District Admiration Office (DAO), widows to the District Development Committee (DDC), injured and disabled to District Public Health Office(DHO), and scholarship scheme to the District Education Office (DEO). In addition, there have been little or no information at the village level about all these procedures.²⁰²

The administrative reparation measures seem to have influenced by the beneficiaries’ political access. For instance, the first scheme of relief (the IDP policy) was designed under the government of Nepali Congress and majority of the IDPs are perceived to belong to Nepali Congress party. Similarly, the financial assistance to those who were killed or disappeared was implemented while the Maoist party was leading the government. Majority victims of this category are perceived to belong to the Maoist and Nepali Congress party. Similarly, the reparative scheme addressing the pregnant combatants and injured and disabled former combatants were developed while Maoist were in the government.

202 Advocacy Forum, Discrimination and Irregularities, the Painful Tale of Interim Relief in Nepal, 2010, Page 20 – 21, available at: http://advocacyforum.org/downloads/pdf/publications/Discriminations_and_Irregularities_A_painful_tale_of_Interim_Relief_in_Nepal.pdf



As one civil society actor summarised the political context around reparations,

“The first challenge is the political bureaucracy and sort of culture where the dominant power always see that we will decide, we will decide for you, you’re going to be just the beneficiary ...There wasn’t an aim, there wasn’t a purpose that through this process we’re going to build a state, or people-state republic relationship. And when you are not clear about your aim, when your aim is to buy silence and then call it reparation, then it’s gonna fail. The challenge was how there was lack of understanding about reparation itself or also political will not really taken into account, the political culture, how always it’s a power game and one is in the position and the other is always below somewhere asking for something. And it comes to a lot of gender equality, social inclusion issues, how you treat people, what is the historical context, who is making policy, how they think about these people. A lot of those challenges comes from their mind state.”²⁰³



Ama Dablam, Nepal – Photograph by Luke Moffett

203 Interview with N03, Kathmandu, April 2018.

6. Conclusion

The reparation efforts tend to focus on financial support rather than addressing the harm suffered by victims and their community. Reparations are not intended to be traded off instead of prosecutions or truth, but are intended to complement each other to remedy victims’ harm and for society to learn from its past mistakes so that they do not recur. Though the TRC Act recognizes the notion of collective reparation, subsequent measures envisioned in TRC Act and Regulations do not provide any space of collective reparation. The exclusion of collective rights seems obvious as the political understanding of the reparation program largely based on the damage and injuries rather than suffering or harm caused. Hence, all existing reparative measures can be viewed of being insufficiently comprehensive. The new Nepalese Constitution recognizes collective rights of women, children, and indigenous and ethnic groups, which raises the possibility that subsequent legislation could implement and realise these rights, as well as enable a collective dimension to reparations arising from the armed conflict.

Reparations can play an important part in establishing a human rights-based culture and rebuilding the social fabric amongst individuals and communities, as well as civic trust in the state institutions. Such efforts have to be complemented with wider efforts to deal with the past and the root causes of violence, including issues such as power sharing and constitutional and administrative governance reform. Reparations have to be part of a broader, coordinated transitional justice process, that collectively seek to prevent victimisation going unaddressed and grievances festering to cause future social disruption and potentially violence.

6.1 Recommendations

The administrative reparative measures in Nepal have no such thing as a reparation programme in strict sense of the word of ‘reparation’. Reparation, in the context of human rights violations, involves restitution, rehabilitation, compensation, satisfaction and guarantee of non-recurrence.²⁰⁴ In many countries, reparation programmes can be designed and implemented on the basis of recommendations of the TRC; however, in Nepal no link seems to exist between the work of the Commissions and the administrative reparation measures.²⁰⁵ Good practice in other countries has been to use the engagement of victims with truth commissions to help craft appropriate reparation recommendations, including draft legislation, a victim registry and innovative ways for funding, such as a wealth tax or bonds.

Reparation is a wider concept that needs to be well defined in terms of scope, modality and definition of beneficiary. The reparation scheme under TRC law and other measures including the administrative reparation measures do recognize some elements of compensation, not as a victim’s right to effective remedy and a basic condition for peace and development. Any reparation measure to be develop in future should recognize that victims have a right to reparation and the

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205 See Luke Moffett, In the Aftermath of Truth: Implementing Truth Commissions’ Recommendations on Reparations – Following Through for Victims, in J. Sarkin (ed.), *The Global Impact and Legacy of Truth Commissions*, Intersentia (2019) 143-168.

form of reparation should not only be limited to (as it currently defined by TRC Act) restitution, compensation and rehabilitation, but also measures of satisfaction and guarantee of non-recurrence be included. If compensation is to be recommended by the TRC, it should consider victims' views and even choice between a lump sum or monthly pension payments.

For an effective reparation programme, wider consultation and participation of victims and other stakeholders is always helpful. This will need to include providing safe and private spaces for victims of sexual violence and other stigmatised victims to come forward to claim reparations. Civil society and donors could play an important role in improving the reach of the state in these efforts across the country, particularly given the size of the country and poor infrastructure. A range of mediums should be used, such as community mobilization events, radio broadcasts, SMS messaging, and newspaper notices. Engagements with victims, victim associations and affected communities should be made in accessible and understandable terms, including in local languages and using mediums such as visual representations and storytelling where appropriate for those who are illiterate. Consultations and participation of victims in the design of reparations should make a special effort to ensure that women, children, elderly and those who are disabled are able to contribute to the process and have their views and concerns heard and considered. Particular attention and provision should be paid to victims of sexual violence and torture, who may feel stigmatized, socially excluded or psychologically harmed, such as private, discreet forums. As one victim of sexual violence said, she wanted support to "help to take care of my children and family and medication, and employment for my children. ... [and I] need of mental support because I keep on remembering."²⁰⁶

Victims, their relatives and the public should have access to easily obtainable, in relevant languages and concise information on the transitional justice processes and progress. The state is responsible for disseminating information to victims and the general public on 'all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.'²⁰⁷ Engagement with victims should be a 'two-way communication ... to conduct interactive activities, to listen to victims and respond to what they are saying, and to take into account victims' concerns.'²⁰⁸ The Office of the High Commissioner for Human Rights as stated that 'national consultations are a form of vigorous and respectful dialogue whereby the consulted parties are given the space to express themselves freely, in a secure environment, with a view to shaping or enhancing the design of transitional justice programmes.'²⁰⁹

Consultations are not public relation exercises and are distinct from outreach, which aim to sensitise affected communities. Once institutions are legislated for, set up and operational, outreach to affected communities is key. The United Nations Secretary General notes the importance of outreach in ensuring the impact and sustainability of transitional justice institutions

²⁰⁶ Interview N25, April 2018.

²⁰⁷ Principle 24, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 16 December 2005, (UNBPG).

²⁰⁸ ICC Strategy in Relation to Victims 2009, ICC-ASP/8/45, para.22.

²⁰⁹ National consultations on transitional justice, Rule-of-Law Tools for Post-Conflict States, (2009), p3.

so that they are clearly understood and coherently communicated.²¹⁰ Effective consultation also can contribute to the collective dimension of the right to truth for society and not just victims to be aware of the consequences of the conflict and the need to redress the suffering of those most affected.²¹¹

Consideration will need to be made on how personal identifying information of victims can be securely held and if it needs to be verified or shared with other bodies, such as the Ministry of Health for provision of specialist rehabilitation for victims of sexual violence and torture. Thought will be needed on how to facilitate victims' access to the process. In other contexts this has included evidential presumptions that victims' claims for certain reparations would be accepted on the grounds of 'good faith' subject to verification by the state administrative body.²¹² Many individuals are likely to have lost their identification, have insufficient medical records, or be unable to provide other evidence to support their claims for reparations. To require victims to supply such evidence may exclude most victims, in particular impoverished and rural victims who cannot afford to travel to the capital to have new documents issued. The government has a responsibility to provide displaced individuals with new documentation.²¹³

In other contexts identification by two credible witnesses' statements were deemed necessary to support victims' claims on harm and identification.²¹⁴ The Inter-American Court of Human Rights in dealing with reparation claims after conflict has taken a relaxed burden of proof, finding that such claims are 'not subject to the same formalities as domestic judicial actions' and the court pays 'special attention to the circumstances of the specific case and taking into account the limits imposed by the respect to legal security and the procedural balance of the parties.'²¹⁵ The UN Claims Commission for the Iraqi invasion of Kuwait took a flexible approach requiring claimants to provide 'simply' documentation on the proof of the fact and the date of injury or death, i.e. *prima facie* proof.²¹⁶ At the same time there should be verification and an oversight mechanism to screen for false claims or corruption, as a number of respondents reported that a number of 'fake victims' had benefited from the interim relief programme due to their political connection as much as 10-20% of claimants.²¹⁷

²¹⁰ Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, March 2010, p10.

²¹¹ See *Youth Initiative for Human Rights v. Serbia*, (Application No. 48135/06), 25 June 2013; and *Magyar Helsinki Bizottság v Hungary*, (Application No. 18030/11, 8 November 2016).

²¹² In Colombia see Artículo 5, Ley de 1448/2011.

²¹³ Article 13(2), African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009 .

²¹⁴ Carla Ferstman and Mariana Goetz, Reparations before the International Criminal Court: The Early Jurisprudence on Victim Participation and its Impact on Future Reparations Proceedings, in C. Ferstman, M. Goetz, and A. Stephens (eds), *Reparations for Victims of Genocide, Crimes Against Humanity and War Crimes: Systems in Place and Systems in the Making* (Martinus Nijhoff 2009), 313–350, p323. *Uganda Situation*, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 of 10 August 2007, ICC-02/04-101, 10 August 2007, para.14.

²¹⁵ *Miguel Castro Castro Prison v Peru*, Merits, Reparations and Costs. Judgment 25 November 2006, Series C No.160 (IACtHR), para.184.

²¹⁶ Recommendations made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims), S/AC.26/1994/1 26 May 1994, at 34-5. Article 35(2)(b), UNCC Rules.

²¹⁷ Interview with government official N02 and civil society actor N08, Kathmandu, April 2018.

In terms of eligible victims for reparations, it should include victims of sexual violence and torture as a priority groups. Such measures for these victims need to comprise of a comprehensive package of measures including social, medical and legal rehabilitation, compensation, measures of satisfaction and guarantees of non-repetition. Child soldiers should also be considered victims as well as victimised state forces, and provided reparations that can correspond to their harm and needs, such as bespoke education training and work opportunities.²¹⁸ In terms of family members of those disappeared beyond the spouse, there should be more equitable distribution of assets and compensation to reduce tension amongst family members. This should ensure that spouses are the primary beneficiary, but that other family members are able to access some compensation themselves to acknowledge their loss. This underlies the importance of including gender principles in the design and implementation of reparations, as women victims may prioritise issues such as health over other measures.²¹⁹ For those victims seriously injured during the conflict they should have access to specialist rehabilitative services to provide them with prosthetics and mobility aids, suited to rural and urban contexts, as well as a pension to ensure some financial security as they get older and their disability impacts more on their mobility and health.²²⁰

Victims and affected communities may also want symbolic measures, such as memorials or apologies as appropriate. Victim associations and local peace committees have already created some memorials, but often these only include the names on the local register of victims as per the victim definition, that excludes victims of torture, or victims of certain violations by a particular actor.²²¹ A national memorial to all victims of the conflict, whether civilian, Maoist or state forces could better contribute to social solidarity and maintain public consciousness to prevent such violence in the future. For apologies if they are going to be made, they should include leaders of the military and former Maoist commanders to give weight to them. There are a number of factors that can make an apology successful in that it mainly satisfies victims: timeliness; explicit statements of apology and regret; an acceptance of personal responsibility; the avoidance of offensive explanations or excuses; sincerity; willingness to make amends and promises to avoid future transgressions.²²²

There should to be a concerted effort by the CoID to ensure that the remains of those disappeared are identified and returned to their families to facilitate burial rites. For those who remains cannot be found there should be engagement with victims in how to clarify their fate and if appropriate memorial events to commemorate their memory. There should be greater investment in psychosocial support at the community and regional levels to ensure better access and coverage to mental health support for victims and ex-combatants. There is also a need to connect

218 Interviews with former child soldiers, some of whom expressed interest in working in security companies or the army, given their training.

219 See 2007 Nairobi Declaration Women's and Girls' Right to a Remedy and Reparation. Interview with civil society actor N07, Kathmandu, April 2018.

220 Interview N29, Kathmandu, April 2018. See Luke Moffett, A Pension for Injured Victims of the Troubles: Reparations or Reifying Victim Hierarchy? *Northern Ireland Legal Quarterly*, 66(4) (2016), 297–319.

221 Interview N06, Kathmandu, April 2018.

222 See Apologies and Institutional Abuse, 2018, p7 available at <https://apologies-abuses-past.org.uk/outputs/reports/>

reparations to guarantees of non-repetition to provide some physical and social security to the civilian population that violence will not be repeated. Such measures should include strengthening community dispute resolution, bolstering the independence of the judiciary, protect civil society actors (legal, healthcare, media, human rights defendants), and providing human rights education to all society and in particular to military and security forces.

Reparations are not simply paying off victims, but a comprehensive effort to acknowledge the harm caused by victims and measures to remedy their harm by those responsible for it. These issues are complex, and political and moral challenging, but by addressing them it can help to mediate underlying social discontent and alleviate the burden that violence disproportionately places on victims. The TRC and CoID should make greater use of international and national experts on reparations, victims' and ex-combatants issues and transitional justice, peacebuilding and development to better craft their recommendations on reparations so that they can be more effectively implemented.



Nepalgunj memorial to victims of the armed conflict, Nepal – Photograph by Luke Moffett

Reparations, Responsibility

 Victimhood in Transitional Societies

FROM RELIEF TO REDRESS:

Reparations In Post-Conflict Nepal

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