

From Relief to Reparations: Listening to the Voices of Victims

पुनर्स्थापना

हृदय भंगो ए दिदी क कहलै गरायो
आज हमीलाई ए दिदी दुःखमा पुचायो ।
इसामे चौतारी

हृदय भंगो ए बहिनी क कहलै गरायो
आज हमीलाई ए बहिनी दुःखमा पुचायो ।
इसामे चौतारी

हृदय भंगो ए दिदी काहू ह कि छइत
हो दिदी काहू ह कि छइत



न्याय कसो हो
मजदुरमा हो
दलबन्धनमा हो
सुदामा हो
क्रियत मत सुनु
हो कि अतिक्रम

सुनुमा ह्या सुबा उला सुनुन दाजु भइ
कोरो लडा हुयोद, ठेपता परिवार लाइ
२०६० साल भोली को अहिना श्रमको मोनबन्धन
माहि केसोने अखनमा वही बाधी सोरो होला,
देखने लई आफन्तने भन्न लौग राक्षसको पाछो भै
उला अग्रे भोली आउने अझा गदागदो बियो देने
न्यायको माग सुनो लाइ धेरै होम,
होला सुनुन अखनमा भोली आउनु एक दिन,
होला सुनुन अखनमा भोली आउनु एक दिन,
होला सुनुन अखनमा भोली आउनु एक दिन,

औधधोपचार तथा प्रनीबैज्ञानिक वैशबिचार

यही परीवेडामा कुटी पभले भोगला पछि लोकोपयोगी
होरी माविस हक मारिए होरी जोतिमहक ठेपता भए होरी लै जातला पाए कोसो
भंग भंग भए उपायु सभैत वने । कतिपयको घर जग्गा कठजा समाप्ति कठज
घर) घरवार विहित वनाइयो । विद्यालय हक सौतेक ०धोरकमा परिणत भ
छाउ वस्ती भुइ अमेमा परिणत भयो । वनजंगल सवै जसतछाटमा परिणत
भयो हरेक वस्तीमा शान्तिकी दाहाकर मन्चयो । छाउ वस्ती वन जंगल सवै
जोसमम वनयो तर पति जत्ताको दोधत्व पूरा ठामे शान्तिहक थाप्नो वहापुर
सम्गीरहै ।

श्रीमान ठेपता हुदाको सित्पुर प्रोहिल्ला पिडितहरूलाई, करव रिक्तिहका भासा पुका, सुदुर
लिका हकलाई कसैले अमर शान्तिकी परिवार त कसैले महान शान्ति
परिवार शान्तिकी ठेपता लगाए । तर शान्तिकी शान्तिकी शान्तिकी शान्तिकी
आपको सौतो
तिम्रा पनि बच्चुआमा होनान !
तिम्रा पनि छोरा छोरी होनान !!
तिमिलहु त्थरै पन्यो भने !
सम्पनामा कति शौनान !!

अनि उगेर हुने रिक यौगानेकी मन
डि साह बाहंघो डि लाए चारियो
हुने अनि कहां हुने ?

सार्वजनिक क्षमायाचना

मेरो कथा व्यथा जस्तै विललाको
परिवार हक के व्याहारक हुने । हो घरेना त गान एउटा उदाहरण
मेरो नाम रेशु का र मेरो जेठाभु ठेपता पारिनामको
कादपल म ठेपता परिवार म एउटा विपन्न परिवारको हुना हो
बैरीजगां व्यक्त हु मलार् मेरो जेठाभुको हुने हुना हो
एउटा लोदारको सम्पदा हुला सम्पदा गालो इ (अखन)
व्यवस्था गालो इकत रने हात्रा परिवारले व्यापारमा
कादपल अर्क हुला सम्पदा इ र पिडन हुने हुना हो
होला सुनुन अखनमा भोली आउनु एक दिन



हृदय भंगो ए दिदी काहू ह कि छइत
होरी सुधी ए दिदी काहू ह कि छइत
इसामे चौतारी
आज हेर ए बहिनी परिवार ठेपता हरे
मजदुरा पिर ए बहिनी ठेपते दिउका हरे ।
इसामे चौतारी
तमीहरो ए दिदी अब के गरील
सवै जाक ए दिदी मिलेर जाइके ।
इसामे चौतारी
सिक्कावालेन ए बहिनी ठेपते रनेको इ
विशेषक ए बहिनी ठेपते रनेको इ
इसामे चौतारी
हरे कोसो

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Acronyms

CAPs	Conflict-affected persons
CAT	Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment
CDO	chief district officer
CoD	Commission on Disappearances
CPA	Comprehensive Peace Agreement
CPN-M	Communist Party of Nepal-Maoist
UCPN-M	Unified Communist Party of Nepal-Maoist
DAO	District Administration Office
DDC	District Development Committee
DEO	District Education Office
DHSO	District Health Services Office
FGD	focus group discussion
IC	Interim Constitution
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
IRP	Interim Relief Program
LPC	Local Peace Committee
MoHP	Ministry of Health and Population
MoPR	Ministry of Peace and Reconstruction
NEFAD	National Network of Families of Disappeared and Missing
NGO	Nongovernmental Organization
NPR	Nepalese rupees
RRU	Relief and Rehabilitation Unit
TF	Task Force
ToR	Terms of reference
TRC	Truth and Reconciliation Commission
UN Basic Principles and Guidelines	United Nations 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
VDC	Village Development Committee

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Introduction

The decade-long armed conflict in Nepal between the state security forces and the Communist Party of Nepal Maoist (CPN-M)—now Unified Communist Party of Nepal Maoist (UCPN-M)—resulted in more than 13,000 deaths (Informal Sector Service Center), more than 1,300 disappearances (International Committee of the Red Cross-ICRC), hundreds of thousands of displaced people, and victims of torture and other human rights violations. Nearly five years have passed since the official end to the conflict, and conflicting parties agreed to establish the Truth and Reconciliation Commission (TRC) and a Commission on Disappearances (CoD) as well as to provide relief to conflict victims and their family members. The Ministry of Peace and Reconstruction (MoPR) has drafted two bills providing for the establishment of two truth commissions: the TRC and CoD mandated by the Comprehensive Peace Agreement (CPA) and Interim Constitution (IC).

The drafting process for these two bills began in 2007, but Parliament has not adopted them yet. The government's failure to establish these truth-seeking mechanisms has delayed justice, truth, and reparations for victims. However, through its Interim Relief Program (IRP), the Nepalese government has made an effort to provide relief to the victims of the 10-year conflict. Transferring cash payments to 13,964 victims or family members of people who were killed or disappeared has addressed some pressing needs. This figure encompasses 3,668 widows; 1,197 family members of people who were disappeared; 1,297 injured or disabled victims; 221 victims of abduction who returned; and 4,238 victims of property loss and destruction.¹ This demonstrates the capacity of Nepalese institutions to implement relief policies and the willingness of the authorities to respond to certain humanitarian consequences of the conflict.

This study seeks to assess conflict victims' experience with the government's IRP since its inception in 2008. The findings are intended to inform a future reparations policy that would seek to help people whose human rights were violated during the conflict period of 1996 to 2006. For most, the IRP has been much needed and welcome. But the harsh reality of the victims' experience provokes both criticism and the need to learn lessons. The criticism is that victims have a right to reparations, which would include a government policy that does not artificially separate matters of compensation from fundamental issues of restitution, rehabilitation satisfaction, or the desire that crimes should not be repeated (non-repetition). It is critical to ensure that the IRP does not tacitly become a substitute for a reparations program, including compensation. In making this distinction, it would be unfair to expect victims to understand a government policy that looks like compensation more generally but is in fact limited to humanitarian relief. In providing relief that looks like compensation, or that can be perceived as rehabilitation (due to medical service), the IRP invited raised expectations, disappointment, frustration, and confusion among victims.

Even though an interim relief program does not necessarily share the same objectives as those of a reparations program, a relief policy for massive human rights violations must be consistent with the state's obligations to respect and guarantee human rights. Such a policy, as any other, must also be consistent with the general obligation of states to not discriminate on the grounds of race, caste, political opinion, socioeconomic conditions, and so forth. Relief to victims of conflict will have a limited effect if it is not based on state obligations with respect to all victims, precisely because harm suffered during the conflict was as a result of human rights violations and not of some force majeure. Accordingly, it is appropriate to analyze the IRP's reparatory effect, given that Nepal has an international obligation to guarantee and promote human rights. Similarly, a close analysis of the implementation of the IRP, as well as a process of listening to the victims, shows that there are still several challenges for responding to the impact of the conflict on those who suffered the most. The voices of the victims help identify those gaps and are essential

¹ Relief and Rehabilitation Unit, Ministry of Peace and Reconstruction, (data presented at workshop on "The Challenges and Success of the Interim Relief Program and Future Reparations Policy in Nepal", Kathmandu, Nov. 15-16, 2010).

in determining what additional elements are required to implement a reparations policy. The lessons from the relief program give Nepal an excellent opportunity to define how to provide reparations to victims. By doing so, Nepal will make additional progress on its way to building a sustainable peace.

Research Methodology and Scope

From September 2010 to February 2011, ICTJ conducted research in 18 Nepalese districts, using a range of tools such as individual interviews, focus group discussions, and workshops with government representatives from MoPR and Ministry of Health and Population (MoHP), Department of Education, District Administration Office (DAO), Local Development Office, District Education Office, District Health Service Office (DHSO), and local peace committees (LPCs), political parties, and civil society and victims' organizations from different districts. The people interviewed included relatives of the deceased, disappeared, those who were kidnapped, injured, or disabled, and people who had property loss or damage. The total number of conflicted-affected persons (CAPs) interviewed directly was 257. ICTJ held 11 focus group discussions (FGDs) and 11 district workshops. In addition, consultations—both in workshops and bilaterally—were conducted with line department representatives and victims' organizations. For violations of torture, rape, and sexual violence, specific case studies were undertaken with victims in a confidential setting. Each researcher also kept a personal diary that has been used as an information source. ICTJ workshops with relevant ministries and five regional workshops also generated information for the findings.

As a result, approximately 1,200 people were either directly interviewed or shared information in group discussions. While the results of the individual questionnaires cannot claim to be representative of all stakeholders' views, efforts were made to reach an array of individuals and officials involved.

Chapter 1

The Interim Relief Program (IRP)

A. Overview of the IRP

Between 2008 and 2009, the government of Nepal published the following policy documents:

- Measures for financial support and relief for conflict victims pursuant to cabinet decision, April 25, 2008;
- Guidelines for providing relief to beneficiary of a deceased person pursuant to cabinet decision, October 5, 2008;
- Guidelines for providing relief to the beneficiary of a disappeared person pursuant to cabinet decision, January 12, 2009.

The guidelines use the term “conflict-affected persons” (CAPs) with respect to those who are entitled to benefit from the IRP. Throughout this study, that term is used interchangeably with conflict victim or victim.² The measures identified in the IRP provide 100,000 Nepalese rupees (NPR)—worth about \$1,430 (U.S.)—to the nearest beneficiary of those who died due to the conflict or who were disappeared by parties to the conflict; for the disappeared, the amount of economic assistance was increased from 25,000 NPR to 100,000 NPR by the third set of guidelines. The program provided 25,000 NPR each to the widows of men who died due to the conflict.

The measures also include scholarships for the children of people killed during the conflict, as well as medical treatment for people injured during the conflict. Other provisions include skill development training for conflict victims, and arrangements for economic assistance to people and institutions whose properties were damaged during the conflict. In December 2009 the cabinet repealed “Measures for financial support and relief for conflict victims” and introduced “Procedure for relief, compensation and financial support for citizens.” The new guidelines state that children of those disappeared during the conflict are also eligible for scholarships. None of the guidelines include other types of victims such as people subjected to torture, assault, rape, or sexual violence. The MoPR Task Force (TF) is currently collecting data on individuals orphaned during the conflict and those illegally detained.³

As outlined, the focus is on monetary forms of assistance, medical treatment, and a skills development training program to be implemented in the future. In this way relief is distinct from reparations, because the IRP does not include the following forms of satisfaction: truth-seeking; searching for the disappeared; public apologies (including acknowledgement of the facts and acceptance of responsibility by the government); prosecuting those who committed violations; commemorations and tributes to the victims; and other victim-centered responses. The draft Truth and Reconciliation (TRC) and Commission on Disappearances (CoD) bills provide that the respective commissions can recommend reparations. It is also expected that the government will use these recommendations as a basis for a future comprehensive reparations policy.

² However, these are not equivalent terms since people can be affected by conflicts without having suffered a human rights or international humanitarian law violation. The IRP uses “conflict-affected” in an attempt to capture direct victims as well as family members, particularly in the area of property and inheritance.

³ The TF is using the following definition for illegal detention: People illegally detained are those who are kept in detention during the conflict by either the state or the rebels, for political reasons, for more than 24 days.

Relief provided by the government through the Relief and Rehabilitation Unit (RRU) as of November 2010

Categories of Violations Eligible to Receive IRP	Total Number/Unit of Victims Identified by the TF	Total Number/Unit of Victims Who Received IRP ⁴
Deceased Persons	16,009	13,964
Kidnapped/Disappeared Persons ⁵	1,219	221
Property Loss/Damage	11,775	4,238
Disappeared Persons	1,292	1,197
Support to People with Disabilities	4,305	1,292
Internally Displaced Persons Assistance ⁶	78,708	
Destroyed Infrastructure ⁷	5,100	1,480
Assistance to Widows	9,000	3,668

B. Implementation of the IRP

The MoPR has created two units to support the implementation of the IRP: the TF and the RRU. The TF collects data regarding the violations that took place during the conflict period. The chief district officer (CDO) located in the District Administration Office (DAO) is the responsible authority for recommending relief and providing the list of conflict victims' names to the TF. The RRU implements the IRP, verifying claims and obtaining documents before authorizing the release of the relief funds to DAOs. The guidelines have created a number of committees that are responsible for verifying whether the applicants are indeed eligible.⁸ The LPC is also a key part of the verification process, with its terms of reference (ToR) included in the guidelines.

⁴ Data provided by the TF.

⁵ The government defines "kidnapped/disappeared persons" as those who allegedly were kidnapped/disappeared by the conflicting parties but reappeared within 30 days.

⁶ The relief guidelines only make a passing reference to IDPs, who were covered by earlier relief measures that, by most accounts, have only been partially implemented. The guidelines also mention, vaguely, payments for transportation and other allowances to IDPs.

⁷ This refers to state-owned buildings and other infrastructure owned by state institutions, and may include private entities.

⁸ According to the guidelines, they are as follows: recommendation committee to provide scholarships to children of those killed or disappeared during the conflict (sec.1.2.4); committee that provides scholarships to students injured during the conflict and to the children of those injured during the conflict (sec.1.2.8); committee that provides economic assistance to widows (sec.1.3.2); recommendation committee that provides treatment and financial assistance, and determines who was injured or disabled during the conflict or decides on the percentage of disability a victim has (sec.2.2.1); committee that assesses the damage done to houses that were rented by government agencies during the conflict (sec.3.1.1); local damage assessment committee that evaluates the damage done to personal property (sec.3.2.1); local damage assessment committee that evaluates the damage done to transport vehicles rented by security agencies during the conflict (sec.4.1.1); local damage assessment committee that evaluates the damage done to transport vehicles destroyed during blockades (sec.4.2.6); local recommendation committee that evaluates the damage done to vehicles that security agencies may have used during definite periods of time to maintain security without paying rent for them (sec.4.4.1); local committee that recommends for relief for those abducted or disappeared by parties to the conflict (sec.5.2.1); all party meeting (committee) for providing relief to beneficiaries of deceased persons (sec.6.3 and 10); and all party meeting (committee) for providing relief to beneficiaries of disappeared persons (sec.6.3).

Until 2010, CAPs who fit into certain categories could apply through the relevant DAO, headed by the CDO. The categories were based on the type of human rights violations identified by the IRP that CAPs suffered. Those categories are: wives or next-of-kin of those killed or disappeared during the conflict; those abducted, disabled, or injured; and those whose property was either lost or destroyed. The CDO serves as the chairperson of the different committees established under the IRP, and is responsible for certifying and registering the victim as a beneficiary. Nevertheless, the LPC further verifies the claimant's eligibility and helps provide supporting documents for the victim to submit to the DAO. On the basis of this evidence—particularly the LPC's recommendation—the DAO will forward the victim's name and relevant documents certifying that he or she is a beneficiary to the TF. The TF then updates the database and forwards it to the MoPR.

The budget allocation process depends on the category of violation. For example, the MoPR allocates the budget directly to the DAO for widows and next of kin of those deceased. The ministry allocates the budget via the RRU for other categories, except for scholarship and health care. Thus, depending on the type of claim, individuals may also need to apply directly to the District Education Office (DEO) or the District Development Committee (DDC).

The Department of Education allocates the budget for scholarships to the DEO. The Health Ministry provides treatment or reimbursement for past treatment either through the DHSO or Kathmandu-based hospitals. The DAO is required to provide the list of beneficiaries to the DDC to allocate relief to widows and to the DEO to provide scholarships to children.⁹ Nevertheless, it is the victims who end up facilitating this process, which means that victims themselves have to present the list of beneficiaries or confirmation that they are victims to the DDC or DEO.

i. The Role of DAOs in the Registration Process

A CDO, who is under the Home Ministry, functions as the responsible district-level actor for maintaining law and security. While a CDO is responsible for verifying conflict victims, in general he or she is from outside the district and does not know the local context or have the same type of relationships with the community that local politicians might have. Therefore, CDOs often rely on the political structure for recommendations on the eligibility of victims. In some cases, a CDO accepts the LPC's recommendation to avoid political pressure. If a CDO is not supportive of the political authorities in the district, he or she has to face local (and probably central-level) political pressure, which creates difficulties for his or her role in the district and may even result in the CDO being transferred out of that district. This gives political parties the chance to pressure CDOs to provide relief to their supporters, who may not be, in some cases, victims.¹⁰ CDOs end up navigating various risks, balancing the politics at all times.

Even though the DAO is the only government authority allowed to verify the victims and recommend relief payments, it does not have enough resources, which affects the claims process. Moreover, there is often a lack of cooperation and coordination among the various officials, such as Ministry of Home and MoPR officials. DAO staff feel that they are assisting the MoPR perform peace ministry functions, whereas MoPR officials understand that maintaining peace in the district is the DAO's role and that the IRP should be seen as part of that process, not an extra duty.¹¹

⁹ See Annex I for charts that show the claims process for people within various categories.

¹⁰ Interview with a CDO from the central region, December 2010. According to the Civil Service Act 1992, sec. 4(3), civil servants are transferred every 18 months to two years. However, some CDOs have been transferred four times in a year, and some have never been promoted.

¹¹ Consultation with the MoPR, December 2010, and with DAOs, September through December 2010.

ii. *The Role of Local Peace Committees*

The LPCs were created as a temporary mechanism to promote and facilitate the peace process at the local level until the new Constitution was adopted.¹² The terms of reference for LPCs includes the mandate to monitor the MoPR's implementation of programs and support the TF as necessary.¹³ The role of the LPCs in certifying conflict victims is not explicitly written in the IRP guidelines. In practice, however, victims submit their applications and evidence to the LPC, which certifies whether the violation described occurred to them or their family members. The role of LPC coordinator rotates among committee members every six months.

There were 72 LPCs formed as of February 2011.¹⁴ However, in many districts LPCs have not been able to meet yet.¹⁵ Village development committees (VDCs) or municipality-level LPCs are also currently being formed. District-level LPCs are comprised of 23 members from different walks of life, including political parties, victims' representatives, human rights activists, nongovernmental organizations (NGOs), and renowned people in the district. The ToR of the LPC requires that four members must be conflict victims. However, these four often represent political parties rather than victims.

LPCs can assist applicants collect evidence of their status as victims, such as media reports. LPC members are familiar with some of the conflict-related cases and can accordingly certify many of these cases easily. Nonetheless, this happens on a case-by-case basis.

Most LPC members consulted stated that they only recommend names of victims and do not think they have any other role in implementing the IRP. This is despite a cabinet decision in July 2010 that mandates LPC involvement in the various committees that support the IRP's implementation.¹⁶ The decision was an effort to improve coordination between LPCs and DAOs. However, during the district consultations conducted by ICTJ, many LPC members were not familiar with this new provision.

It was reported that victims who are not affiliated with a political party do not get the same level of support from LPCs as those with affiliations.¹⁷ The research showed that a significant number of victims are not politically affiliated, and they receive support from other victims instead of the LPC or other mechanisms to receive the relief amount.¹⁸ One district consultation participant said that an LPC member told a victim, "Sorry, we can't do anything for you because you are not a member of our party."¹⁹

Some victims interviewed said there was no point in forming LPCs if victims are not included in the process. Moreover, victims who are also LPC members indicated that they did not have sufficient information regarding how the LPC recommends victims to the CDO or stated that they were not actively engaged in the process. These members said they are largely ignored in decision-making processes.²⁰ During certain

¹² See the Local Peace Committee's ToR, sec. 4.1, <http://www.peace.gov.np/uploads/Publication/LPC-ToR-Eng-%202065-10-20.pdf>.

¹³ *Ibid.*, secs. 4.2 and 4.3.

¹⁴ The three districts in which LPCs have not yet been formed are Gorkha, Tanahu, and Ramechhap.

¹⁵ For example, the Sunsari LPC office operated for three months, and then staff contracts were not extended due to internal debate. District level workshop, Sunsari, September 2010.

¹⁶ Cabinet decision adopted July 16, 2010, providing that the LPC coordinator and one female member should serve on the different committees identified in the IRP guidelines.

¹⁷ Consultations with victims and civil society representatives, September through December 2010.

¹⁸ Almost 70 percent of victims received support from victims' organizations, leaders of victims' groups, and other victims in the process. Only 5.4 percent got support from political parties where as they are in a position to provide support through the LPCs. With respect to knowing about the IRP, 46.4 percent of claimants heard about the IRP through political parties. Thus, there was a difference between information being shared about the availability of the IRP and support in making claims. ICTJ individual questionnaire, 2010.

¹⁹ District level workshop, Tanahun, December 2010.

²⁰ General response from consultations in 11 districts and five development regions, September through December 2010.

district level consultations, participants said political parties use the IRP as an opportunity to raise the number of party votes and lobby victims to that end. A LPC member said, “We do not have that level of interference in our daily work from political parties, but the situation in the district cannot be completely different from the national political scenario.”²¹

Interviews indicated that political parties propose names of their party members or supporters to be recommended as conflict victims. The list is agreed upon among the political parties, and thus people who are not victims get government assistance.

iii. *The Role of the Task Force*

The government has not undertaken a systematic, comprehensive program to document and provide a remedy for conflict-related violations of human rights and international humanitarian law. Instead, in May 2007 the cabinet established the TF under the MoPR, which was mandated to collect data on CAPs. The TF is responsible for collecting all the CAPs-related data for the MoPR. Data collected includes names of those who were killed, disappeared, abducted, injured, illegally detained, orphaned, or had personal property that was either destroyed or lost. The TF also collects data on lost or destroyed public property. With respect to disability claims, the TF collaborates with a panel of three doctors to determine a person’s disability percentage based on the information provided by the DAOs.

In addition, the TF is mandated to collect data from different sources, including the International Committee for the Red Cross (ICRC), the National Human Rights Commission, and one NGO, the Informal Sector Service.

A government official informed ICTJ that the TF had collected victims’ names from different organizations and provided the information to the MoPR so they could receive relief. The MoPR then authorized DAOs to pay relief to these victims. However, the relevant DAOs expressed their concern and displeasure because the victims had not been recommended by CDOs. As a result, the TF now only relies on data from DAOs.

After the term of the first TF expired, a second one came together on September 20, 2008. The third TF was formed on August 26, 2009, and expired on July 16, 2011. Each TF essentially worked under the same ToR, but had a different staff.

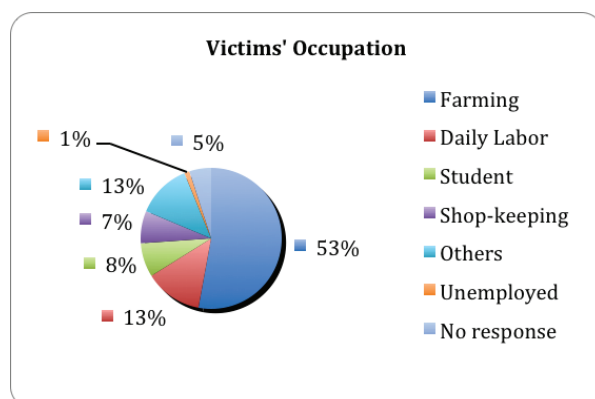
iv. *The Role of the Relief and Rehabilitation Unit*

The MoPR established the RRU to implement the IRP. Originally created on April 26, 2007, for a period of one year, its mandate has been extended three times. It receives conflict victims’ data from both the TF and the MoPR. The RRU coordinates with the districts on behalf of the MoPR. It has three main responsibilities: re-verifying the claims and requesting information that is lacking from the DAO (such as photographs of the beneficiary); working with the TF regarding claims ; and authorizing the DAOs to provide the relief amount to victims.

²¹ Consultations with LPCs, September through December 2010.

C. Profile and Situation of Victims

Figure 1



The socioeconomic condition of victims is relevant to understanding the impact of the violations they have suffered, since general conditions of poverty increase victims' vulnerability. The individual questionnaire shows that 31.9 percent of the victims do not own land and 53 percent are farmers. Of those who are farmers, 62.1 percent do not own land. Of the non-farmers, 13 percent depend on daily labor, 8 percent were students, 7 percent had small shops, and 13 percent serve in different professions such as politics, teaching, law enforcement/ military and NGO work (see Figure 1). The individual questionnaire also shows that

more than 81 percent of those interviewed cannot produce enough to eat throughout the year. When victims or family members received relief money, almost half of them spent it on household consumption.²² Thirty-nine percent of those who received relief spent it on repaying loans, and 33 percent used the money to educate their children.²³

The above statistics present a picture of the situation of the majority of victims. Many lost the primary breadwinner of the family; 37.7 percent of them said they were breadwinners before the conflict, and 63.4 percent became breadwinners for the family after the conflict. Female respondents comprised 53.3 percent, and a quarter of them became breadwinners after the conflict due to the death, disappearance, or disability of their husbands.²⁴ These families live in a precarious situation, and even if they do manage to survive today in conditions of scarcity, their coping mechanisms are not sufficient to deal with new situations that may arise, such as illness or a bad harvest. The absence of a breadwinner, the trauma experienced, the isolation due to social stigma, lack of social services, and even threats from those who do not want them seeking justice leave them in vulnerable situations.

Many people were injured or disabled due to torture, assault, or getting caught in cross fire, and, as a result, they are no longer able to engage in economic activities. As one victim reflected, "I was taken into custody by security forces because one of my sons-in-law, when arrested by the army and taken to the barracks, greeted me on the way. After I was released we had to leave due to threats to our security. It cost us thousands of rupees, and I am not able to undertake physical work, which has created an enormous economic burden on us."²⁵

A 13-year-old girl was raped while returning home after grazing the cattle in the jungle one evening. The family refused to report it to the media or make a police report because they worried about threats from the perpetrator. The victim is now in very weak condition.²⁶ One victim said, "I spent 10 years in jail. After

²² The exact figure is 46.7 percent, ICTJ individual questionnaire, 2010.

²³ Since the question offered multiple responses, the total exceeds 100 percent.

²⁴ ICTJ individual questionnaire, 2010 (noting 25.3 percent of 53.3 percent). According to the ICRC, many families have been deprived of their primary breadwinners: 90 percent of the people missing are men, 81 percent of whom are married, and 71 percent are between 18 and 35 years old. The age group also indicates that women often have young children to support, and therefore they face numerous social and economic problems. Meen Bhawan and Naya Baneshwor, *Families of missing persons in Nepal: a study of their needs* (Kathmandu: ICRC, June 30, 2009), 12.

²⁵ Interview, Dadeldhura, October 2010.

²⁶ Individual case study, Kailali District, November 2010.

leaving jail, I find it difficult to adjust to the community now. Nor do I have any means to support myself.”²⁷

Victims of conflict also suffer health problems. Many stated that they need medication for the rest of their lives and regular check-ups to prevent more problems. There is also a great need to heal from traumas.²⁸ One victim noted, “I still have three bullets in my body; I cannot afford to remove them. I will remove the bullets if I get assistance from the government.”²⁹

Victims also suffer from fear, distrust, and concern about the threat of reoccurrence. Consultations revealed that some of those involved in the research felt that there is still a need for retaliation or revenge. During an FGD, one victim said, “When I remember the torture I received from the police, I get mad and want to eat them alive.”³⁰ While there are increasing numbers of groups comprising victims from both the government and Maoist sides, many victims have never interacted and see each other as political enemies. For example, during ICTJ consultations, victims of Maoist forces hesitated to take part in the gatherings organized by the state victims and vice versa. Nevertheless, once interacting, many points of common ground were found.³¹

²⁷ Interview, Kathmandu, September 2010.

²⁸ Interviews in Kavre and Mahattori districts, December 2010. One victim said she was injured in a battle with the security forces. Doctors have concluded that she will need medication for the rest of her life, something that she cannot afford. She has seen others who are less injured or even have no injuries receiving lakhs (one lakh is a 100,000 rupees or \$1,400) from the government, yet she has not received anything. She is frustrated with the UCPN-M because no one from it is addressing her situation. She had little information about the government medical reimbursement provision. Her treatment was done in India and later (after the initiation of peace process) in a government hospital. She may be eligible for 5,000 to 7,000 NPR on the basis of her documentation. However, this does not solve the problem of needing medication for the rest of her life.

²⁹ FGD with torture victims, Kavre District, December 2010.

³⁰ Ibid.

³¹ FGD, Sindhuli District, December 2010.

Chapter 2

Victims' Experiences

A. Findings of Discrimination

The principle of nondiscrimination is one of the cornerstones of international human rights law.³² Freedom from discrimination, including on the grounds of gender, is codified in the UN Charter, binding for all UN members, and is a key principle in all human rights treaties. Nondiscrimination on the basis of gender is also firmly grounded in international humanitarian law and international criminal law.³³ The UN 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 (UN Basic Principles and Guidelines) also include a nondiscrimination provision and call for compliance with international norms of nondiscrimination.³⁴ Discrimination may be in law (*de jure*) or in fact (*de facto*). Thus, policies that appear neutral on their face must also be examined to ensure that discrimination is not allowed to continue in practice.

An analysis of the IRP guidelines shows the exclusion of certain categories of victims and the unequal treatment of others. The research also provides an understanding of how victims perceive that discrimination. The categories of harm included in the IRP appear to disregard the level of harm as a criterion. The exclusion of torture, rape, and sexual violence, for example, is inexplicable. The inclusion of property damages, agricultural loss, or vehicle damage or misappropriation by security agents sends a contradictory message to society about what is valued the most, and which violations and harms are more severe. Including institutions as potential beneficiaries of property damage increases the confusion and also poses questions regarding the relief nature of the program.

i. Rape and Sexual Violence

The IRP does not include rape or sexual violence among the crimes covered by relief. Government officials justify this exclusion in two ways. The first is that victims of rape can get compensation from the perpetrator through the ordinary criminal justice process.³⁵ Interviews with rape victims indicate, however, that this justification is without basis. In practice, rape victims do not use the formal justice system for at least two reasons. First, they are sometimes unable to identify the perpetrator. Second, the law requires that

³² *Universal Declaration of Human Rights*. On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights by General Assembly Resolution 217A (III), art. 2; *Convention on the Elimination of All Forms of Discrimination against Women*, General Assembly resolution 34/180 of 18th December 1979 entry into force 3rd September 1981, art. 2; *International Convention on Civil and Political Rights*, General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, articles 2 and 26; *International Covenant on Economic, Social and Cultural Rights*, General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, articles 2(2) and 3; *Convention on the Rights of the Child*, General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, art. 2.

³³ Sex or gender discrimination are terms that are used interchangeably, albeit having different meanings. "Sex" refers to a person's biological or anatomical identity as male or female. "Gender" refers to the characteristics that are culturally associated with maleness or femaleness.

³⁴ *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 (UN Basic Principles and Guidelines)*, General Assembly resolution 60/147, Dec. 16, 2005, XI.

³⁵ See National Code (*Muluki Ain*), secs. 10(a) and (c). "If a person is convicted of rape, the court shall order appropriate compensation to the victim from the offender. In awarding compensation physical and mental harm suffered, gravity of the offence as well as the harm suffered by the dependent minors of the victims will be taken into account if the victim is deceased. . . . If the court convicts the accused of rape on a case filed pursuant to this Chapter, the court shall indicate compensation in its decision judgment and shall also cause the same to be provided to the concerned woman. For the purposes of realizing the compensation, the court shall indicate the share of joint property that the woman is entitled to."

rape victims provide evidence based on a medical examination within 24 hours of the crime. Even during peacetime this is almost impossible in practice for women to fulfill due to lack of access to medical facilities, social stigma, fear, mistrust of authorities, and lack of awareness of the law and criminal justice system.

During a district workshop, a male victim from the Tharu community explained that there is not any social stigma regarding Tharu women who were victims of rape and sexual violence. But the other justification put forward by the government is that it is difficult for victims of rape and sexual violation to request relief due to social stigma. Nevertheless, it is the government's obligation to remove the legal barriers, as well as work to remove the attitudinal barriers that foster social stigma so victims of rape and sexual violence can file complaints or request relief with confidence. As a result of not being recognized as a category of violation, many victims of rape do not receive psychosocial support, medication, or health care to treat resulting injuries, nor can they reveal their stories and seek justice through this process.

Since there is no provision for compensation for victims of sexual violence in the IRP, cases are not reported formally. In this regard, consultations showed that many DAOs have never received a claim from a victim of conflict-related sexual violence for compensation. This is in contrast to research findings, which revealed a number of cases of sexual violence.³⁶ Nevertheless, based on the case studies ICTJ collected, no victims have attempted to submit any claim. These findings indicate that it is unlikely such cases will be reported unless a mechanism is established that would ensure the anonymity and the security of the victims.³⁷

Victims of sexual violence are reluctant to share their experience given the stigma associated with having suffered these crimes. One victim stated that the stigma from being raped were passed down to the next generation, affecting her daughter. "I am a widow, and people know that I was gang-raped; thus I do not have good social image. It is difficult to get my daughter married because of my social image. I am still scared to put on yellow clothes remembering the day I was raped."³⁸

ICTJ also recorded instances in which families rejected victims after learning they had been raped. "I was rejected from the family forever when I told my husband about the reality," a victim said. "Many women of my fate are compelled to go India just for a living and [to] avoid blame and hatred."³⁹

If there is no benefit for victims after they expose themselves in the community as victims of sexual violence, then there is no reason to do so. Protecting victims' confidentiality should not be an obstacle for registering and including them in a reparations program.⁴⁰

ii. *Torture Victims*

The IRP excludes victims of torture.⁴¹ Unlike victims of sexual violence, torture victims have approached every possible authority, including DAOs, to try to file applications. But since there is no provision in

³⁶ Case studies and FGDs, September through December 2010. See also ICTJ and Advocacy Forum, *Across the Lines: the Impact of Nepal's Conflict on Women* (Kathmandu: ICTJ and Advocacy Forum, December 2010).

³⁷ Consultations with NGOs in 18 districts, September through December 2010.

³⁸ Interview, Siraha District, September 2010.

³⁹ Interview, Sarlahi District, September 2010.

⁴⁰ Measures for guaranteeing confidentiality have been established in Peru and Sierra Leone, which have included victims of rape and sexual violence in reparations programs. See Mohamad Suma and Cristián Correa, *Report and Proposals for the Implementation of Reparations in Sierra Leone* (New York: ICTJ, December 2009).

⁴¹ Art. 1 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states, "Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

the IRP and thus no mechanism mandated to listen to them, these people have not been heard. This has consequences for the individual and the family. According to one torture victim, “Being victimized in the conflict does not only affect one person but affects the whole family.”⁴² The TF is mandated to collect names of those who were detained illegally and kept in detention for more than 24 days by both parties in the conflict. Given that torture often occurred in the context of illegal detention, the TF will no doubt be gathering some data on torture victims. A victim from Kavre summarized her own experience, as well as the collective experience of victims she works with: “The rejection of the state today is even harder to tolerate than the physical assaults and torture that we endured during the conflict period. How long can we remain in this state of victimization is the question today. If our patience runs out, then the state will have to pay a high cost.”⁴³

Both parties in the conflict systematically used torture.⁴⁴ According to the special rapporteur on torture, the RNA, the Nepalese police, and the Armed Police Force systematically practiced torture and ill treatment during the conflict primarily to extract confessions and obtain intelligence, even though Nepal has been party to the Convention against Torture, Cruel Inhuman and Degrading Treatment or Punishment (CAT) since May 14, 1991.⁴⁵

Torture has not yet been criminalized as required by the CAT nor as recommended by the UN Committee against Torture.⁴⁶ Victims can claim compensation under the 1996 Torture Compensation Act; however, the act includes a time limitation to file the case, which is 35 days.⁴⁷ Moreover, it takes a long time to receive compensation through this process. According to Advocacy Forum, an NGO that works with torture victims, “The courts have awarded compensation of between NPR 5,000 (approximately \$75) and NPR 100,000 (approximately \$1,492). Over the whole of the 12 years, only 7 victims (13.46%) have thus far received this money.”⁴⁸

Despite the immediate need to address suffering, consultations with government officials indicate that the TRC will address conflict-related issues, both included and excluded by the IRP. Thus it seems that the issues of torture and sexual violence will only be addressed after the TRC is established, and no date has been set for that yet.⁴⁹ The research indicated that local authorities are supportive of including these categories but have not initiated the discussion locally, nor have they made formal recommendations to the central level.

⁴² FGD with torture victims, Kavre District, December 2010.

⁴³ Ibid.

⁴⁴ “The occurrence of torture increased dramatically during the decade of internal armed conflict (1996 to 2006) as both the security forces and the Maoist rebel forces systematically used torture to intimidate, suppress, control and punish victims.” Advocacy Forum, *Hope and Frustration: Assessing the Impact of Nepal's Torture Compensation Act-1996*, 1st ed. (Kathmandu: Advocacy Forum, 2008), 3.

⁴⁵ *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted and opened for signature, ratification and accession by GA resolution 39/46 of Dec. 10, 1984, and entry into force on June 26, 1987, U.N.T.S., vol. 1465, 85. The special rapporteur submitted his report after visiting Nepal Sept. 10 to 16, 2005. See *Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, E/CN.4/2006/6/Add.5, Jan. 9, 2006, 8, para. 17. See also Reshma Thapa, “Nepal's Failure to Address Torture: The Relevance of the UN Torture Convention” (working paper no. 4, Center for Civil and Human Rights, University of Notre Dame, Notre Dame, IN, Winter 2008), http://www.nd.edu/~ndlaw/cchr/papers/thapa_nepal_torture.pdf.

⁴⁶ If someone wishes to make a criminal complaint about actions amounting to torture or ill treatment, they have to classify it as a “physical assault” covered in the Muluki Ain, which does not specifically mention torture inflicted by security official.

⁴⁷ Torture Compensation Act, sec. 5(1).

⁴⁸ Advocacy Forum, *Hope and Frustration: Assessing the Impact of Nepal's Torture Compensation Act 1996*, 1.

⁴⁹ Consultation with RRU, Kathmandu, December 2010. See also Kamal Raj Sigdel, “Transitional Justice: two crucial bills still on hold,” *Kathmandu Post*, March 21, 2011, <http://www.ekantipur.com/the-kathmandu-post/2011/03/21/top-story/transitional-justice-two-crucial-bills-still-on-hold/219672.html>.

iii. *The Disappeared and Deceased*

Forced disappearance is not a crime in Nepal. Parliament has not yet approved the disappearance commission bill; if it passes, the bill would criminalize the act of enforced disappearance. While kidnapping and illegal detention are both crimes until it is proven that the deprivation of liberty has ended, a complaint must be filed within six months of either the commission of the offense or the release of the person.⁵⁰ Family members are left to decide whether to report a death or a disappearance, a decision with profound implications culturally. For example, a widow has to wear white or at least not wear red and colorful dresses for her entire life. She may no longer take part in religious ceremonies, and for many it is a civil death.

Under the first relief guidelines, the government provided 25,000 NPR to the family of a disappearance victim and 100,000 NPR to the family of a deceased victim, thus creating a disparity between death and disappearance. As a result, relatives of the disappeared began to claim to be relatives of someone killed.⁵¹ Eight months later the Procedure for Relief, Compensation and Financial Support for Civilians replaced the previous relief guidelines, Financial Support and Relief for Conflict Victims.⁵²

Under the new guidelines, family members of deceased and disappeared people receive the same amount (100,000 NPR). Moreover, the new guidelines give scholarships to children of the disappeared. Before only children of the deceased were eligible.

Although these are important steps toward ending disparity, the guidelines are still not coherent in how they treat different categories of victims. For example, wives of disappeared persons are not provided the amount of 25,000 NPR that is provided to widows of those who died during the conflict. As a result, a significant number of wives of the disappeared are still registering themselves as widows.⁵³ This will be problematic in any future truth-seeking process because the only official record now indicates that these victims had died. However, during truth-seeking processes, families will testify as to disappearance, seeking to know about the fate of the disappeared person.

Moreover, the government has never encouraged families of disappeared not to register as deceased or to correct their status. There are cases in which victims are registered under both types of violations; when that happens, the first registration status prevails.⁵⁴ Based on information received by ICTJ, the first registration status is usually deceased, which then leads to the problems identified above.⁵⁵

iv. *Other Sex-based Discrimination*

The guidelines take the approach of repairing financial loss rather than addressing harm. For example, if a widow or a wife of a disappeared person remarries, she is not eligible for interim relief because she now has a new breadwinner. On the other hand, a harm-based approach would not consider that remarriage would affect a person's right to reparation. This implies that remarriage mitigates the harm of losing a

⁵⁰ Muluki Ain, sec. 13, states that there "shall be no limitation on filing a suit for the offence of kidnapping/abduction or hostage taking . . . if a suit is not filed within Six months from the date of the commission of kidnapping/abduction or hostage taking or from the date of release from kidnapping/abduction or hostage taking, the suit shall not be entertained." Chap. 8, sec. 1, states, "In cases where a person has to be arrested and detained under the Act, the person shall be given food and water to eat and drink as referred to in the Act. If a person is detained otherwise or against the provisions of the Act with or without providing food and water, the detention shall be considered to be an offence."

⁵¹ Consistent feedback during consultations with victim representatives, September through December 2010.

⁵² Decision No. 18, cabinet decisions, Nov. 5, 2009.

⁵³ The National Network of Families of Disappeared and Missing (NEFAD) in Nepal submitted its statement demanding the equal provision to the widows of deceased and wives of disappeared people at the conflict period to the MoPR on July 26, 2010. Two months later, NEFAD submitted a letter to the MoPR asking for a revision of the discriminatory provision of providing 25,000 NPRs to widows but not to wives of the disappeared.

⁵⁴ Consultation with TF representative, April 2010.

⁵⁵ Ibid.

breadwinner. However, harm is also the psychological impact of losing a spouse as well as the effects of taking on new roles, which increases the burden on women. Notably, the guidelines are silent if a man remarries.⁵⁶ Similarly, the guidelines are silent about whether a man who lost his spouse in the conflict is eligible to receive 25,000 NPR.⁵⁷

v. *Arbitrary Determination of Disability*

In the case of victims who were disabled because of the conflict, benefits are adjusted according to the nature and severity of the disability. Children are eligible for scholarships if they or a parent receive a determination of being more than 50 percent disabled. Victims having less than a 50 percent disability or invisible disabilities (such as a psychosocial disability) are not covered.⁵⁸ This means that victims of torture and sexual violence who do not have visible external injuries are not covered.

The process of determining the percentage of disability is also questionable, because it is made on the basis of how the disability has been described in the application form without ever seeing the applicant. The decision is made by three doctors based in Kathmandu, in consultation with the TF. According to a TF representative, the forms often are not completed in accordance with the TF's rules. "A detailed description is needed from the field on the nature and severity of the disability," the representative pointed out in different ICTJ workshops "If the form has a description like the applicant does not have a hand, this is insufficient information. The doctors need clear information of which hand was lost, at which point on the body the amputation was made. But information we receive from the field is lacking such descriptions."⁵⁹ Therefore, there are discrepancies among people with similar disabilities because there has been no consistent means of determination. Questions such as what an injury means for the person and so on are not asked.

Furthermore, there is no specific provision for victims to challenge the decision if they do not agree with the given percentage. A victim whose spinal cord injury resulted in paralysis from the waist down has reapplied to increase his disability percentage, which has been determined at 10 percent.⁶⁰ The steps required are time-consuming, and in the words of one victim, sometimes it is difficult to see the benefit: "I spent more than the relief amount received to go through the process. At the end, I received a determination that my disability was only a small percentage whereas I cannot walk properly or work."⁶¹

vi. *Other Limitations*

The conflict deprived many victims and their children of education. The individual questionnaire results show that 33.5 percent of victims identified their primary need as securing their children's education. Accordingly, the scholarship program is one of the most significant IRP programs. The DAO provided the IRP-related scholarships at first. But since April 2008, the DEO has implemented the program.⁶²

⁵⁶ Procedure for Relief, Compensation and Financial Support for Citizens, 2009, sec. 1.3.2.

⁵⁷ *Ibid.*, sec. 1.3.1.

⁵⁸ FGD with torture victims, Kavre District, December 2010. One victim said, "After coming out from jail, I cannot stand on my feet for more than 10 minutes without any support. How can I do any physical labor?"

⁵⁹ During a series of five regional workshops with central- and local-level authorities in January and February 2011, a MoPR Task Force representative recommended that local government authorities provide more detail on the nature and severity of the disability.

⁶⁰ Interview, November 2010. The victim applied for relief in April 2006 and received 20,000 NPR in March 2010. His injury is such that he cannot move around without support of a caregiver. He has appealed the decision since, but despite assurances from MoPR staff, his request for review has not been addressed.

⁶¹ Victim with a disability, regional workshop, Biratnagar, January 2011.

⁶² Guidelines to Provide Economic Assistance and Relief to Conflict Victims, April 25, 2008.

Implementation has been thwarted, mainly due to lack of funds to fulfill program commitments.⁶³ Unfortunately, there is currently no information on how this has affected families, such as how many people are not receiving scholarships or not receiving the full amount for which they are eligible.⁶⁴

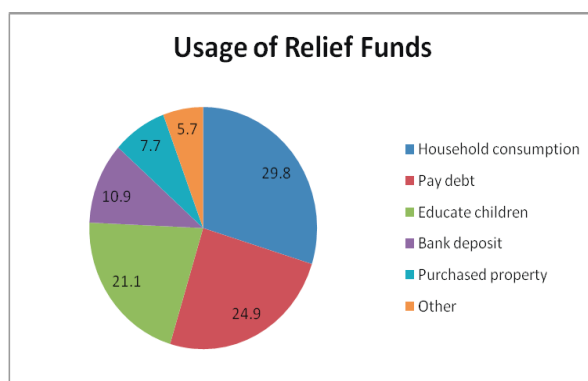
The scholarships are only available for conflict victims' children younger than 18 who are in grades one to 12. Although a Supreme Court decision has ruled that education is now free up to grade 12, the hidden costs affect poor families.⁶⁵ For example, schools may charge a range of fees, and students have to buy uniforms, books, stationery, and food. Accordingly, a scholarship can greatly facilitate access to education that normally would not be available to poor families. Nevertheless, only up to three children per family are eligible, which deprives approximately 18 percent of children.⁶⁶

Children who lost their schooling opportunities because of the conflict and are now older than 18 are not covered by the IRP. In addition, the age limit of 18 is not relevant in the rural context. In most rural areas, a child that age is still only in eighth or ninth grade.⁶⁷ Victims have also identified the importance of providing informal education, as many do not want to enroll in formal education because of the stigma of studying with students who are much younger.

B. The Impact of the IRP's Implementation

i. Victims' Use of the IRP Funds

Figure 2



By providing lump sum payments or reimbursements for demonstrable loss, the IRP was not designed and has not been able to respond to the consequences of the violations victims suffered. The data in Figure 2 indicates that IRP funds were indeed used for their intended purpose, responding to an immediate need and not providing a sustainable exit from poverty or reduce vulnerability for most victims.⁶⁸ Notably, funds were most commonly used to pay debts and for household consumption.

The research questionnaire also showed that very few victims are satisfied with the relief program, and most reported that the IRP does not address their needs and rights. Many commented that the support needed to be easily accessible, for example, through the VDCs.⁶⁹ The findings showed that victims would prefer a program that provides either sustainable or more long-term support, in addition to the lump sum

⁶³ In February 2011, a representative from the Department of Education said the department still lacks the 56 karore (5.6 million NPR) to provide the necessary scholarships. See also Kamal Thapa, "Conflict-hit children deprived of full scholarship," *Republica*, Aug. 6, 2011, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=21937.

⁶⁴ DEOs from Siraha and Mahottari districts, September 2010.

⁶⁵ *Lekh Nath Neupane v. Office of the Prime Minister and Council of Ministers, Ministry of Education et al.*, Feb. 21, 2011; Ananta Raj Luitol, "Provide free education till Plus Two: KC," *Himalayan*, Feb. 22, 2011, <http://www.thehimalayantimes.com/fullToday.php?NewsID=277300&headline=Provide+free+education+till+Plus+Two%3A+SC>.

⁶⁶ ICTJ individual questionnaire, September through December 2010.

⁶⁷ District level workshop, Baglung, December 2010. This was also frequently raised during a series of five regional workshops ICTJ organized, with the support of INSEC, that took place from January to February 2011. The participants included central- and district-level representatives responsible for implementing the IRP, as well as victims and civil society organizations.

⁶⁸ There are apparently some exceptions. For example, some victims from the Far Western Region of Nepal have used the compensation as seed money for income generation purposes.

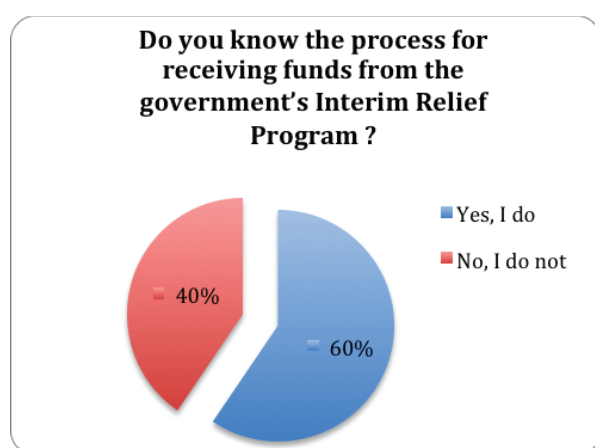
⁶⁹ During consultations, victims, victims' groups, and civil society often said that the present IRP needed to be redesigned to make it more accessible to victims. This would necessarily apply to a future reparations program.

received as relief. In this regard, one of the most emphasized needs for both male and female victims was related to income generation, such as employment opportunities and skill orientation training.⁷⁰ Another consistently high priority was educational opportunities.⁷¹

During consultations, victims also demanded immediate restitution of their confiscated property so they could resume their normal socioeconomic life. They argued that it is difficult to use lump monetary sums to provide permanent economic support for a family that had lost a breadwinner. The harms suffered have affected the capacity of victims to provide income to sustain their needs; the violations have affected their health, their opportunity to access education, and their ability to provide a better future for themselves.

ii. *Level of Access to Relief and Its Impact*

Figure 3



During different ICTJ programs with victims, researchers found that victims know the government is providing a certain amount of relief money, but they were confused about the amount and the process. The individual questionnaire accordingly sought responses to two different questions: first, whether victims knew about the IRP, and second, whether victims knew the process to access the IRP. With respect to the first question, 33.5 percent of victims did not know about the relief program. While 65.4 percent knew about it and 1.1 percent respondents did not answer, 40 percent of those interviewed (See Figure 3) did not know what steps to take to benefit from the program.

The individual questionnaire also shows that 70.8 percent of victims interviewed received the relief assistance provided by the government.⁷² Among those interviewed, 41.8 percent responded that they have received the full relief amount. Nevertheless, almost one quarter of those interviewed had not received the relief.⁷³ In one case, the DDC had to return the funds to the central authorities because it did not receive any applications from widows.⁷⁴ This suggests that victims simply did not receive adequate information about the possibility to make a claim, because a number of widows from that district later made applications.

More surprisingly, even some government authorities were not fully aware of the IRP or did not have a copy of guidelines.⁷⁵ Similarly, updates and amendments to existing procedures and guidelines often do not reach the district authorities in a timely manner. During the district consultations with relevant stakeholders,

⁷⁰ The question was open-ended so victims identified a range of needs. The breakdown is as follows: skills orientation or development trainings, 15.3 percent of all victims and 22.6 percent for female victims; and employment opportunities, 29.2 percent of all victims and 41.6 percent for female victims. ICTJ individual questionnaire, 2010.

⁷¹ According to the individual questionnaire, 33.5 percent of all victims and 28.5 percent of female victims said this was a priority.

⁷² The study also showed that the 42 percent have received relief assistance from Nepal Red Cross, ICRC, UN agencies, national and international NGOs, and community-based organizations for financial support, access to health care, education, water, agricultural support, nonfood items, psychosocial counseling/healing, legal assistance, and food. ICTJ individual questionnaire, 2010.

⁷³ According to the individual questionnaire, 23.7 percent have not yet received relief.

⁷⁴ DC official, district-level workshop, Siraha, October 2010.

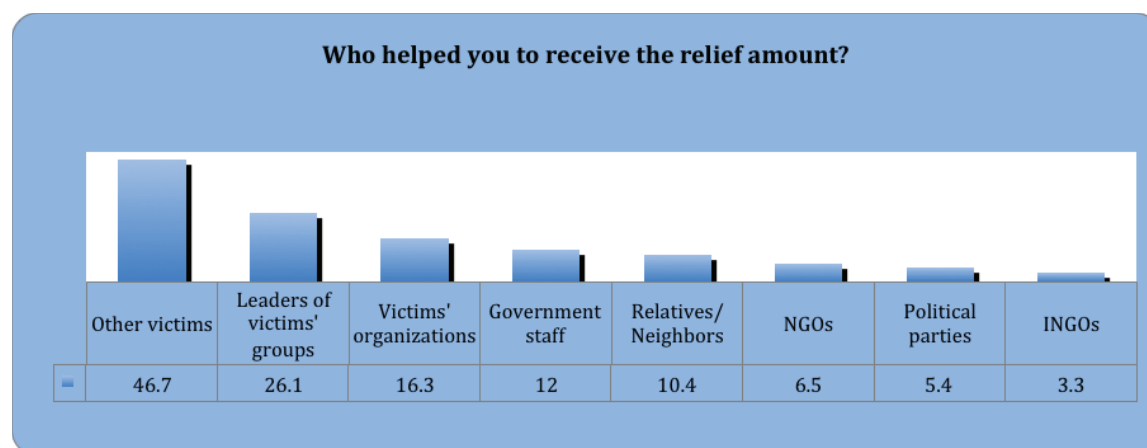
⁷⁵ District level workshop, Baglung, December 2010. A government official noted that he had borrowed the guidelines from a leader of victims' group to be able to make a copy of them.

it was apparent that many LPCs and District Women and Child Development Office representatives did not know about the amendment to the guidelines that entitles children of the disappeared to scholarships.⁷⁶ Members of various recommendation or assessment committees did not know that they held membership positions.⁷⁷ LPC members and representatives of the District Women and Child Development Office did not know that they needed to sit on the various committees dealing with the IRP.⁷⁸

Ensuring access to information about the IRP is an important aspect of restoring a victim’s dignity. A transparent flow of information signals to victims that the government views them as important. Apart from international law obligations regarding the right to information, the UN Basic Principles and Guidelines also address the importance of access to information. In this regard, states are required to develop a means of informing victims of the rights, remedies, and “all other services to which victims may have a right to access.”⁷⁹ And while the IRP is not a reparations program, it is sufficiently close to one that it can be argued that the government should consider the importance of these principles in implementing the IRP. Furthermore, these principles certainly must be considered in any future reparations program.

IRP-related information is disseminated through LPCs, political representatives, VDCs, and municipalities. The VDCs and municipalities are the grassroots-level structures for information sharing. As a result, victims who reside in the municipalities and along or close to main highways are generally better informed and have applied for or received relief assistance. The research showed that 49.5 percent victims received the relief through their own initiation and 50.5 percent victims received it through help from different people and/or institutions. Among almost half of those respondents, 46.7 percent received support from other victims, and 42.4 percent from victims’ organizations and leaders. (See Figure 4.) This indicates that while there is an understanding that the process is highly politicized, victims were able to get assistance through other victims or their organizations. Despite this, civil society and victims’ organizations agree that information has not reached rural victims effectively.

Figure 4



The female victims interviewed were almost three times more likely to be illiterate than their male counterparts.⁸⁰ This means that if information is provided in written form or there are forms to be filled out, many women cannot access the process without support. In addition, submitting applications and

⁷⁶ Cabinet decision, Dec. 15, 2009.

⁷⁷ District level workshops, September through December 2010; regional workshops, January through February 2011.

⁷⁸ Cabinet decision, July 16, 2010.

⁷⁹ UN Basic Principles and Guidelines, X, principle 24.

⁸⁰ Some 10.2 percent of male victims interviewed were illiterate, compared with 28.6 percent of female victims; 82 percent of male victims had attended primary school, compared with 41.7 percent of female victims. Individual questionnaire, 2010.

following up on them must be done at the district offices. Often female victims do not have sufficient funds for travel from their villages. There is also social stigma attached to women who travel outside their villages.

The July 16, 2010, deadline for submitting applications created problems for both the government and the victims. Many who are eligible for relief did not apply within the deadline because they did not know about the program or they were afraid of reporting on perpetrators. Now if they go to apply for assistance, the authorities cannot accept their applications because of the deadline.

iii. Social Impact of Receiving Relief

Victims discussed both the positive and negative effects of receiving relief. Positive effects related to daily livelihood, access to health care and education, as well as debt relief. The negative effects were increasing feelings of guilt, feeling discriminated against in the distribution process, and no changes in their situation. It is also worth noting that many respondents stated that they had mixed emotions about receiving the money. Some felt it was like “blood money” and that it can never repair loss of human life:⁸¹ “We are facing the loss of life and are bound to fight for the relief of a thousand rupees,” one victim explained. “Though we received the relief [*rabat*], we are still unaware about the whereabouts of our loved ones.”⁸² Another victim said, “I cried for the whole night on the day when I took a check of a hundred thousand rupees due to the disappearance of my husband.”⁸³ Similarly, the leader of a victims’ group said that many people, including his family members, did not immediately apply for relief as they considered it blood money.⁸⁴

In some cases, family relations were reported to be strained. Compounding widows’ existing sense of guilt that they were receiving blood money, families have accused them of profiting from their husbands’ deaths; they have been threatened and deprived of property ownership, particularly those with daughters.⁸⁵ Disputes have also arisen within families over the use of the money received, and in some cases, daughters-in-law (the widows) are deprived of a share. Widows have said that their in-laws may also deal with the relief money in a manner inconsistent with their wishes and generally mistreat the widows once they get the money.⁸⁶

In other cases, people have borrowed money once they know a victim has received relief. Some female victims reported that neighbors and relatives did this and never repaid the loans. If the woman refuses to lend money, this negatively affects social ties; so she is put into a difficult situation.

iv. Impact on Health

The IRP provides for reimbursement of health expenses for past treatment as well as treatment due to conflict-related injuries. If victims require treatment, they must apply for it through the DHSO. If the treatment is not locally available, the IRP pays for one-time travel to whatever government facility offers the treatment, but it does not cover follow-up visits. Victims can only be reimbursed if they are treated in government facilities. This ignores the fact that many use private hospitals, because they are afraid of being captured if they use government facilities or government hospitals lack expertise in many cases. So many victims seek treatment south of the border in India.⁸⁷

⁸¹ Consultations with victims’ groups and individual interviews with victims, September through December 2010.

⁸² District level workshop, Jhapa, September 2010.

⁸³ Victim group consultation, Banke District, September 2010.

⁸⁴ Interview with leader of victims’ group, September 2010.

⁸⁵ FGDs with victims and individual interviews, September through December 2010.

⁸⁶ *Ibid.*

⁸⁷ Health care in India was and is cheaper, closer, and reliable for the people residing in the Terai. It has been a common practice for people before and after the conflict to seek treatment in neighboring Indian cities.

One district health worker stated that no perceived or actual Maoist sympathizer would have risked their life by waiting for the services of government hospitals in emergencies.⁸⁸ Even keeping medical receipts would have been a great risk. Moreover, those who would treat the Maoists would have also risked their lives. The leader of a victims' group allegedly provided medical treatment to the Maoists. As a result, he was tortured by the Nepalese Army in their detention facilities. When he was released, he could not get treatment because people were afraid they would be detained if they supported him. He later sought treatment in India.⁸⁹ Victims who need regular medication and check-ups are not able to access health facilities easily, and the IRP does not, nor was it designed to, respond to their ongoing needs.

v. *Impact on Education*

As noted earlier, the conflict deprived many victims and their children from pursuing their education. For many victims, doing so is a priority. Although the IRP seeks to address this issue through its scholarship provision, the age limit and quota of three children per family is depriving many of getting an education. As one female victim expressed, "What to do with other children—take them to the river and let them flow?"⁹⁰ Furthermore, many respondents suggested that spouses of deceased or disappeared people should also be provided scholarships to further their education.

C. The Challenges of the IRP Claim Process

At the implementation level, weak interdepartmental coordination, lack of clear criteria, as well as inconsistencies in decision-making and processing claims have created numerous problems for both the implementing agencies and the beneficiaries.

i. *Inaccuracies in Registration and Fraudulent Claims*

Given the differences in the types of relief benefits provided to relatives of people killed and disappeared, it was common for victims of forced disappearances to apply for relief as victims of killings because there was an additional lump sum of 25,000 NPR for widows. This is evident in one district where there is not one single registered case of disappearance; all applications have been for killings.⁹¹ This not only misrepresents what happened, but also it may have long-term implications when these victims want to search for their family members or be part of future truth-seeking processes.

Since access to property also becomes important for many victims struggling economically, there is greater incentive to file as a victim of a killing as opposed to disappearance. A family cannot conduct property transactions in the name of a disappeared member until 12 years have passed; after 12 years, a missing person is declared legally dead.⁹² In this respect, people who were disappeared before April 2000 can be legally treated as dead. However most of the disappearances occurred between 2001 and 2004. The UN Working Group on Enforced and Involuntary Disappearances found that during 2003 and 2004 Nepal had the highest numbers of reported disappearances globally.⁹³

The MoPR has raised concerns about fraud in the relief process, for example, when nonvictims claim to be victims or victims exaggerate their losses to receive maximum compensation. When asked about such

⁸⁸ DHSO presentation, district level workshop, Baglung, December 2010.

⁸⁹ Interview, September 2010.

⁹⁰ Statement from a female victim from Bardiya during the National Hearing on Women's Perspectives of Transitional Justice, which ICTJ hosted on Nov. 23, 2010.

⁹¹ The district is Mahottari.

⁹² Evidence Act, 2031, sec. 32.

⁹³ UN Working Group on Enforced and Involuntary Disappearance, *Fact Sheet No. 6, Rev. 2* (Geneva: UN OHCR, 2006), 1. <http://daccessdds.un.org/doc/UNDOC/GEN/G05/105/23/PDF/G0510523.pdf?OpenElement>.

claims, a MoPR official stated, “There are bad people in every society, and we cannot avoid them. We cannot expect the state to be *Ramarajya* [an ideal, perfect state needing no mechanism for punishment], and that’s why there are police and courts.”⁹⁴

The respondent added, “Fraudulent claims are made, but we do have a mechanism in place at the district level to assess the application. Only those applications that have the needed supporting documents are approved. Relief follows approval. The CDO can verify details of any application using mechanisms under its jurisdiction, including the police. Fraudulent claims, to us, is cheating, and the CDO has the right to punish cheaters. There are certain instances where the CDO has asked individuals who have received relief on the basis of fraudulent paperwork to return the received amount.”⁹⁵

ii. *Coordination and Cooperation among Stakeholders*

One of the most serious criticisms of the IRP’s implementation is the lack of coordination among the different stakeholders at the district level, particularly between the DAOs and LPCs that need to collaborate. For some categories of victims, two line agencies operate to provide relief. For example, widows need to present documents issued by the DAO to the DDC to receive their allowance. Similarly, while the DAO verifies eligibility, benefits regarding health care and education are provided by the DHSO and DEO respectively. Victims therefore need to file with other offices to receive benefits such as scholarships.⁹⁶ Authorities at the district level do not sit together and jointly process applications. Victims are not given any document or receipt when they receive relief. Therefore, victims need to resubmit all documents to each different government authority from which they are seeking relief assistance, and they are rarely informed of the status of their claim once it has been filed.

iii. *Politicization*

Politics permeates all stages of the process from filing applications to distributing relief. Since LPCs are crucial actors, their own politicization means that in determining eligibility, they often rely on the guidance they receive from political parties.⁹⁷ It was reported during the consultations that LPC members recommend beneficiaries for relief based on each party’s “quota,” even though the people recommended may not be victims.⁹⁸ Initially LPCs needed to make victim-related decisions through consensus. However, the inability to garner political consensus resulted in many issues remaining unresolved or being significantly delayed. As a result, the requirement of consensus was amended to that of majority vote. In addition, certain victims also have their own political allegiances and have their parties influence the verification decisions within LPCs.⁹⁹ Victims reported that as a mechanism in the IRP, LPCs are becoming unreliable—as well as difficult—to work with.

iv. *Different Layers of Decision-Making Regarding Relief*

The relief guidelines state that no relief should be duplicated; if a person is receiving assistance from a source other than the IRP, the relief amount is deducted or stopped.¹⁰⁰ Similarly no relief is provided for property loss or destruction covered by insurance.¹⁰¹ Authorities claim that monitoring such duplication is

⁹⁴ Consultation with the MoPR, December 2010.

⁹⁵ *Ibid.*

⁹⁶ Consultations with NEFAD Central Committee, August 2010.

⁹⁷ Interview with victim at district level workshop in Sunsari, September 2010.

⁹⁸ FGDs and general consultations with NGOs, victims’ groups and individual interactions, September through December 2010.

⁹⁹ *Ibid.*

¹⁰⁰ Procedure for Relief, Compensation and Financial Support for Citizens, sec. 31.

¹⁰¹ *Ibid.*, sec. 24.

a great challenge and results in a lot of tension with claimants. In addition to the guidelines, decisions on relief made by other authorities, such as the cabinet, have caused complications. For example, a victim of a killing is entitled to 100,000 NPR. Nevertheless, if a cabinet decision declares the victim as a martyr, the family is entitled to 10 times the amount (one million rupees). However, there are no set criteria governing who can be called a martyr, and the definition changes depending on which party is in power.

The Supreme Court also awards compensation in amounts that differ from the IRP. In August 2007, the court issued a decision directing the government to provide compensation to 83 families of peoples who were subjected to state-enforced disappearance.¹⁰²

v. *Insufficient Funds*

The Ministry of Finance releases the budget for relief payments to the MoPR, the MoHP, and the Ministry of Education. However, often the required funds are not sent, and that means that victims do not receive the amount to which they are entitled. For example, the widows of Dhading District have only received 18,000 NPR instead of the 25,000 NPR they are eligible to receive.¹⁰³

The MoHP has also reported that it is unable to send adequate funds for relief to the DHSO, which manages the payments for it, due to resource constraints.¹⁰⁴

The Ministry of Education is in a similar situation. Often DEOs receive a scholarship budget that is less than what is required. The DEOs then use their discretion in distributing the scholarships. Sometimes they distribute the total received amount evenly among all registered beneficiaries, which means that each child gets less than he or she should. Other times, scholarships are authorized on a first-come, first-served basis, which eventually deprives many children of funding for their education.

¹⁰² *Rajendra Prasad Dhakal v. Nepal Government*, 3575, Habeas Corpus, (June 1, 2007). See also *Sharma v. Nepal*, Communication No. 1469/2006, CCPR/C/94/D/1469/2006 (Nov. 6, 2008).

¹⁰³ Interview with a leader of victims' group from Dhading District, September 2010.

¹⁰⁴ Procedure for Relief, Compensation and Financial Support for Citizens 2009, sec. 27.

Chapter 3

Conclusion and Recommendations for a Future Reparations Program

Even though the IRP does not necessarily share the same objectives as those of a reparations program, a relief policy for massive human rights violations must be consistent with the state's obligations to respect and guarantee human rights. Such a policy, as any other, must also be consistent with the general obligation of states to not discriminate on the grounds of race, gender, caste, political opinion, or socioeconomic conditions. Relief for conflict victims will have a limited effect if it is not based on a state obligation with respect to all victims, precisely because harm suffered during the conflict was the result of human rights violations and not of some force majeure.

The right to an effective remedy is well established in international law. Under the International Covenant on Civil and Political Rights, Nepal has an obligation to provide a remedy for violations of human rights. In the context of gross violations of human rights and serious violations of international law, the UN Basic Principles and Guidelines provide that the state is responsible for ensuring that victims of human rights violations enjoy an individual right to reparation. This includes the duty to:

- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice . . . irrespective of who may ultimately be the bearer of responsibility for the violation;
- (d) Provide effective remedies to victims, including reparation . . .¹⁰⁵

The UN Basic Principles and Guidelines indicate that reparations should consist of multiple components, identifying a range of forms of reparations. These include restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.¹⁰⁶ More specifically:

- Restitution to restore the victim to his or her original situation before the violation. This can include restoring liberty, the enjoyment of human rights, and restoration of employment and return of property.¹⁰⁷
- Compensation should be provided for any economically assessable damage in a way that is appropriate and proportional to the gravity of the violation. Violations include physical and mental harm, lost employment or educational opportunities, and material and moral damages.¹⁰⁸
- Rehabilitation includes medical and psychological care and legal and social services.¹⁰⁹
- Satisfaction is a nonfinancial expression of reparation, which can take a range of forms such as truth-seeking, searching for the disappeared, public apologies, commemorations and tributes to victims, sanctions against those liable for violations.¹¹⁰

¹⁰⁵ UN Basic Principles and Guidelines, principle 3.

¹⁰⁶ *Ibid.*, IX, principle 18.

¹⁰⁷ *Ibid.*, principle 19.

¹⁰⁸ *Ibid.*, principle 20.

¹⁰⁹ *Ibid.*, principle 21.

¹¹⁰ *Ibid.*, principle 22.

- Guarantees of nonrepetition include measures to contribute to preventing further or future violations and include reforms to institutions such as the legal system, the educational system, and the security apparatus

The IRP is an important contribution to alleviate the situation of many victims. However, if the state is to more fully guarantee the right to remedy, the IRP should either be complemented or redesigned to include all the elements of a reparations program, or a separate reparations policy and program should be developed in consonance with international standards. Ideally, to meet the legal requirement and be adequate and effective, such a policy and program should encompass different aspects of reparations, which comprise rehabilitation of victims, satisfaction, recognition of the truth, symbolic forms of reparations, and reforming institutions and policies to guarantee that human rights violations will not be committed again. This means defining reparations measures that respond to the needs of victims, and that take into consideration the consequences of harm and the suffering of victims. It also means defining the rights of victims, providing equal forms of reparations to similar categories of victims, and avoiding any form of prohibited discrimination.

Finally, the state should learn from the IRP, and establish a form of registration and implementation of any reparations program in such a manner that affirms the dignity of victims, guarantees humane treatment, is participatory and transparent, is efficient and expedient, and promotes the inclusion of all victims.

A. Avoiding Discrimination in Reparations Law and Policy

The IRP discriminates and treats victims unequally, and this needs to be addressed in the design of any future reparations program. This means defining all the categories of victims to be covered and establishing similar forms of reparations for all. The experience from other countries suggests minimizing distinctions between victims.

Research in Nepal found that differences in categories and treatment had created tension among victims. For example, widows lose their benefits if they remarry because the requirement of not having a husband is no longer fulfilled. This reinforces the argument for measures such as pensions, scholarships, and health care that can address the needs of victims but does not assign a price to their suffering.

Specific Recommendations

- The definition of the victims and the reparations measures should be established by law and not simply by guidelines that the executive branch has defined and that are subject to change. It has to be clear that victims are entitled, what they are entitled to, how they can make claims, and that there is an established process to appeal any denial of reparation.
- This definition of victim should include all categories of victims of gross violations of international human rights law and serious violations of international humanitarian law committed during the conflict; forced disappearances, extrajudicial killings, torture, rape, other forms of sexual violence, arbitrary detentions, or kidnapping.
- Another aspect of the definition of the reparations program is to establish with certainty the benefits that each category of relatives of the victims would receive.

i. Broadening the Definition of Beneficiaries

Most victims are from rural areas and live in poverty. Culturally men usually are the breadwinners in Nepal, and they support a family's livelihood; a family includes spouse, parents, children, as well as siblings in many cases. So losing the primary breadwinner in or because of the conflict affects the whole family. The IRP excludes parents as beneficiaries, despite what this loss means. Spouses and siblings are not provided scholarships and have to leave school because they were dependent on the person who was killed, disappeared, or disabled.

One way to address some of these conflicts is to legislate that the victim's next-of-kin (usually the widow) and parents each get certain amounts, as should children; each of them would get an equal share. This means less certainty for establishing the budget for such a program, but more certainty and equal treatment for the victims. This could have the potential of avoiding conflicts within families and saving time and resources for authorities, which currently mediate or solve those conflicts.

Specific Recommendations

- A lump sum or pension should be given to widows, each child, parents, and other relatives for each category of violations. Amounts should be subject to periodic readjustments according to inflation.

ii. *Prioritizing the Most Severe Violations*

For certain victims, the IRP's categories of harm do not reflect a priority according to an evaluation of the most severe forms of harm, such as torture, rape, and sexual violence. In other contexts, property damage has not necessarily been included in reparations policies for massive human rights abuses or armed conflict, given the seriousness and extensive harm caused to the life or physical integrity of victims.¹¹¹ The UN Basic Principles and Guidelines make a reference to economic loss in the definition of victims, when it is the result of "acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law."¹¹² It is important to note, then, that not all forms of property damage covered by the IRP are direct consequences of such serious violations.¹¹³

Providing relief for property loss usually results in benefiting those who are wealthier in a society, becoming a regressive policy in times of scarce resources and need of addressing some structural reforms. Not only does such a policy benefit people who had a property to lose or be damaged, confiscated, or used, but also it is limited to those who can prove that ownership and loss. This can discriminate against some poor farmers who do not own their land, who had to flee from violence without proof of ownership, or whose livelihood was based not in property, but on tenancy or more precarious forms of accessing and working land. Government officials have noted that fraudulent personal property destruction claims are increasing, and that those claimants, or support for those claimants, include politicians, parliamentarians, and ministers.¹¹⁴

Specific Recommendations

- The design of a reparations policy should consider all these issues and victim priorities before deciding to include property loss or damages. If decided in the affirmative, the policy should include ways to mitigate problems such as inadequate documentation or other inequalities that might result in disparate capacities of victims to prove their tenancy or ownership rights. It might also consider imposing a ceiling for compensation, or a proportional reduction of it, to avoid giving more value to property than to life.

¹¹¹ However, victims of the Holocaust were able to file property claims in Germany and Austria; some have also filed claims to dormant accounts in Swiss banks. There have been also property restitution efforts for land claims in Iraq, unmovable property and housing in Bosnia-Herzegovina, and also in response to the Iraqi invasion of Kuwait. Colombian parliamentarians are debating a victims' law. In addition to providing forms of reparations for human loss, this bill includes Land restitution for those who were forced to migrate, abandon, or sell their properties, given the magnitude of the forced displacement and forced appropriation of land in Colombia.

¹¹² UN Basic Principles and Guidelines, principle 8.

¹¹³ In the preparatory works for the UN Basic Principles and Guidelines in 1993, Special Rapporteur Theo van Boven offered the following list of such violations, based on definitions made at that time by the International Law Commission, by Common Article 3 of the 1949 Geneva Conventions, and by other sources: "genocide; slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular based on race or gender." Theo van Boven, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms* (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, July 2, 1993, E/CN.4/Sub.2/1993/8), para. 13.http://www1.umn.edu/humanrts/demo/van%20Boven_1993.pdf.

¹¹⁴ Bilateral and workshop consultations with officials from the MoPR and RRU, 2010.

iii. *Define a Simple, Unified Procedure and Structure*

The problems caused by insufficient or ineffective outreach for victim registration and the challenges in distributing benefits highlight the need to treat victims with humanity and respect in any effort to respond to their needs or fulfill their rights to reparation. The current process has not made victims feel adequately respected or recognized by their government. The steps need to be reviewed and redesigned to guarantee that a reparations program reaches all victims, treats them equally, and is perceived by them as an affirmation of their dignity. The standard of evidence should be low and flexible, considering the massive violence that happened during the conflict and the historical data about how the conflict was experienced in the different regions of the country at different times. Flexibility must be exercised especially with regard to victims who are more likely not to have documented records of the events, such as people living in rural areas in periods of intense violence or victims who reasonably were reluctant to record what happened to them for fear or confidentiality concerns.

Specific Recommendations

- An independent body, free of political interference, should do registration and verification. LPCs or other bodies could be consulted only for providing information that could help the verification process.
- The procedure should not be burdensome on victims. They should be treated with respect and consideration of their suffering and of the state's obligation toward them.
- The application process could be a good opportunity to listen to victims, obtain information about their needs, and acknowledge the government's responsibility. If the responsibility lies with CPN-M, then in the spirit of solidarity, the political leaders should also issue an apology for human rights abuses committed.
- The process should guarantee confidentiality to victims. The testimonies should be kept confidential and known only to those who need to make decisions about them. The verification process should not reveal the details of what happened to victims to people not involved in the decision, and if necessary the names and other identification features should be kept confidential. Victims of torture and sexual violence should be part of a list that does not specify the crime suffered, but simply placed in a general category of victims who survived, as opposed to those killed or disappeared.

iv. *Prioritizing Victims' Needs*

Victims were not consulted in the design of the IRP process. A number of respondents expressed disappointment that they had not been asked about what they wanted. The research showed that victims placed importance on the process as well as the relief itself. Many victims said, "We must be involved in the process and heard", in different meetings. A future reparations policy could provide this opportunity.

In terms of how to deal with long-term support and access to services, some victims felt that having a system of priority for victims would be useful; this raises the question of priority over whom, particularly given general levels of poverty in Nepal. The long-term solution should be aimed at improving the capacity and quality of social services.

Specific Recommendations

Consultation

- Ensure victims' participation in any programs that may have implications for them, including information dissemination, collecting needs and aspirations of victims, planning about the reparations program, and implementation of it.
- Encourage the creation of victims' and civil society committees at the local level to advise on the outreach, registration, and verification process.

Understanding needs

- Design reparations to address the long-term needs of the victims, such as capacity development, pension schemes rather than a one-time monetary sum, educational benefits tailored for those who are no longer of school age, scholarships that guarantee children complete secondary education, health care, and psychosocial support.
- Establish special educational programs tailored to youth and adults, in addition to scholarships for pursuing formal education. These programs should include literacy and skills training without an age limit.
- Ensure special services directed to victims that provide psychosocial support, prosthetic or rehabilitation for those disabled or injured, and referrals to medical services.

Principled approach

- Both individual and collective reparations should be given to recognize systemic and collective patterns of human rights abuse.
- Provide symbolic reparations as a way to acknowledge violations of women that tend to be neglected or treated as private, including individual forms of recognition, as well as public apologies, monuments, or other forms of public recognition. Guarantee the participation of victims' organizations in the design and implementation of these measures.
- Establish prosecutorial policies that would facilitate the investigation and hearing of gross violations of human rights law and serious violations of international humanitarian law, according to the existing criminal law, and guarantee victim participation in the trials.

Context-conscious responses

- Provide a reasonable lump sum amount according to the nature of injury for treatment that is not provided by the public health care system or by a special health care program to be created since—as described earlier—medical reimbursement is not practical in Nepal's context.
- Design an educational policy aimed at all those who have lost the opportunity to study, and not just to those who are still younger than a certain age.

B. Overcoming Process Challenges in Implementing a Reparations Program

i. Access to Information and Outreach

To improve the outreach process, consideration should be made of the literacy levels of victims and their access to the relevant district capital. This includes using local radio stations that transmit in local languages, report on local events, and are frequently listened to by a large section of society.

One methodology that could be useful for Nepal is one used to launch a registration process in Peru. The Peruvian Reparations Council organized workshops at the provincial level, inviting local authorities and civil society organizations to help define how to reach victims of Peru's conflict in their villages. The participants had the opportunity to ask questions about the program, and draw maps of their villages and surrounding rural areas, explaining to the registry officers how to reach them and which resources to use. This not only helped on the outreach process, but also gave it more legitimacy.

A just, equitable, and efficiently delivered program of reparations requires a clear knowledge of victims' identities, geographical location, and the profile and characteristics of the victims and the beneficiaries. This not only facilitates the planning of the delivery of a reparations program but also ensures that individuals receive the reparations to which they are entitled. Even though the Nepalese government established a task force in 2007 to register the victims, the identification and assessment of them has not been completed. Many victims have not been included in the lists, and to date the full lists have not been publicized.

Specific Recommendations

- Review and improve information flow by involving victims' organizations and local institutions as early as possible.
 - Ensure the information disseminated reaches the target beneficiaries directly, rather than relying solely on public media. Issuing a personal letter from the authority and asking victims to come along with the letter to collect assistance would be an effective way to reach specific people.
 - Define and communicate a clear procedure for submitting applications, including what is expected from victims (documents to present, submission of additional information), and detail the commitment of the registration authority in regard to research for the verification process and communication with the applicant, including communicating the result.
 - Issue a letter acknowledging the receipt of relief support at the time of distributing assistance; this would be very helpful for victims to produce as evidence when required.

ii. Gender

Specific Recommendation

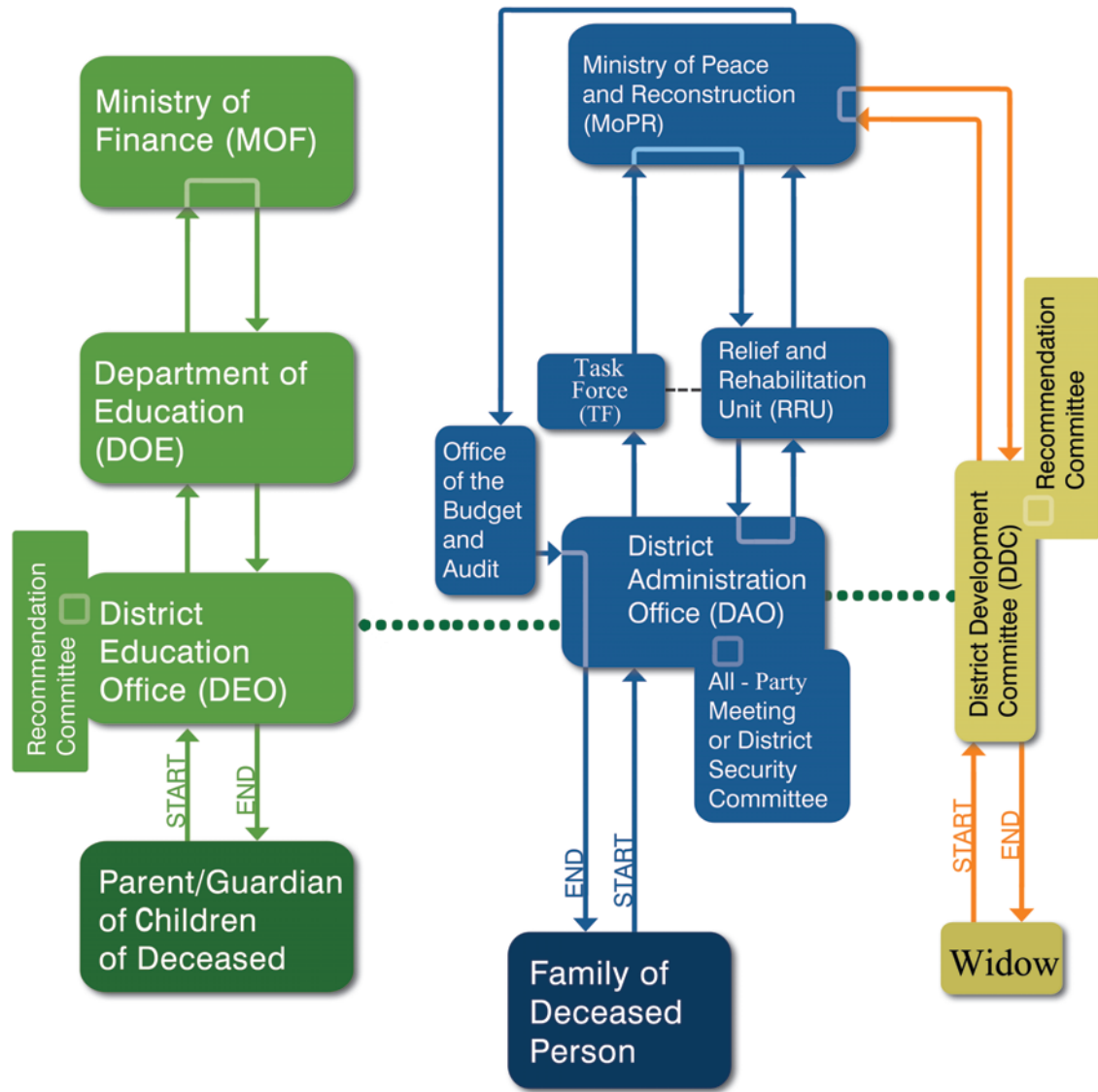
- Conduct an assessment with victims' and women's groups (so as to address the gender-specific needs of conflict victims) about reparations measures to learn what they want.
- Take steps to ensure that gender power dynamics, including who controls financial decision-making in the household, do not prevent women from having access to and control over reparations. Examples could include awareness sessions on how they might invest their money, microenterprises, and other livelihood training.
- As Nepalese inheritance and property laws do not allow the spouse and/or children of a disappeared person to inherit property or hold a formal title to land or property grants due to the legal requirement that the owner of the property must be deceased, legislative reform must be undertaken to ensure that the wives of the disappeared can legally transfer their husbands' property in their name.

Annex

Annex I

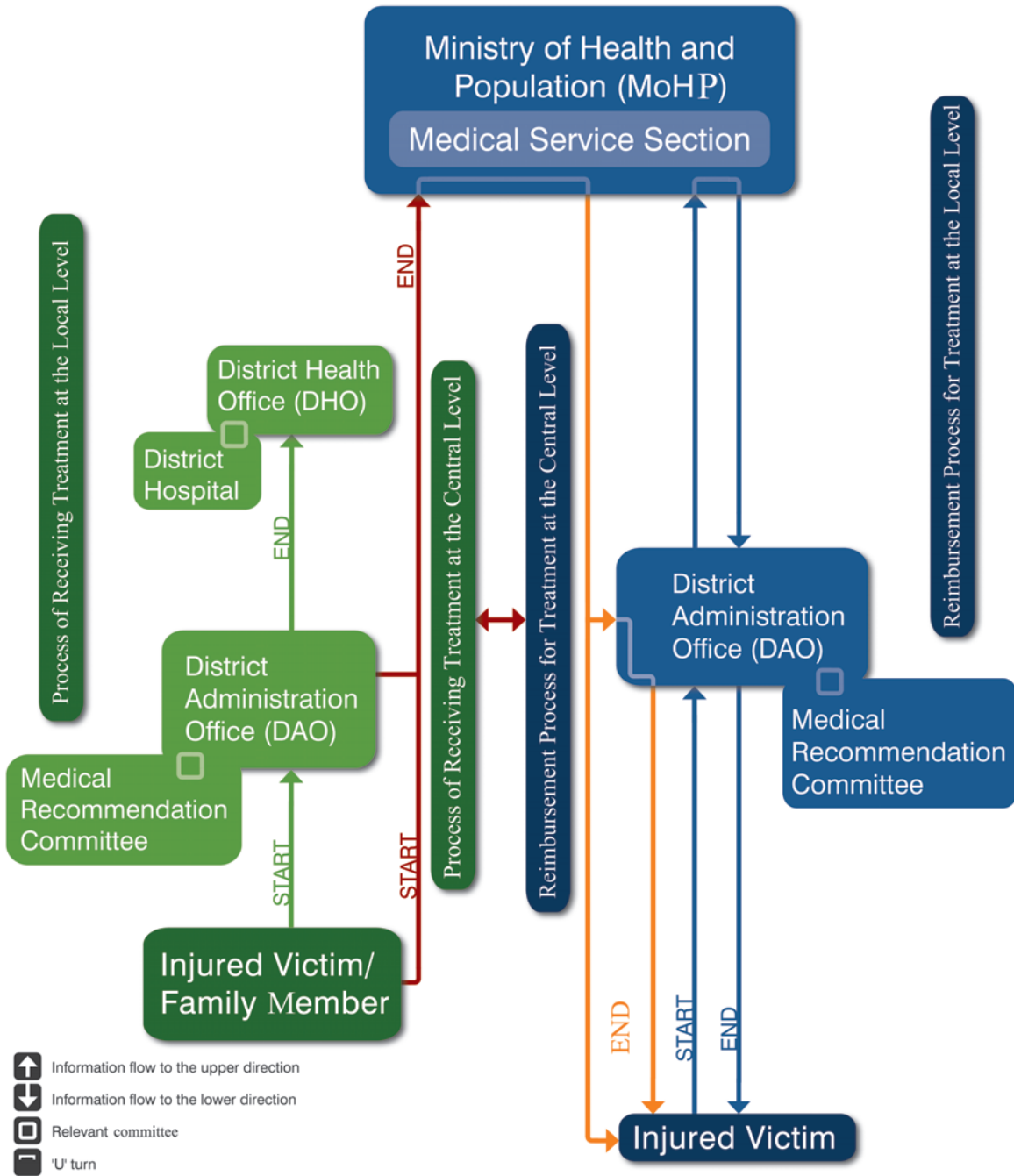
Flow Charts on the Process for Filing Applications

Relief Process for Family of Deceased Person

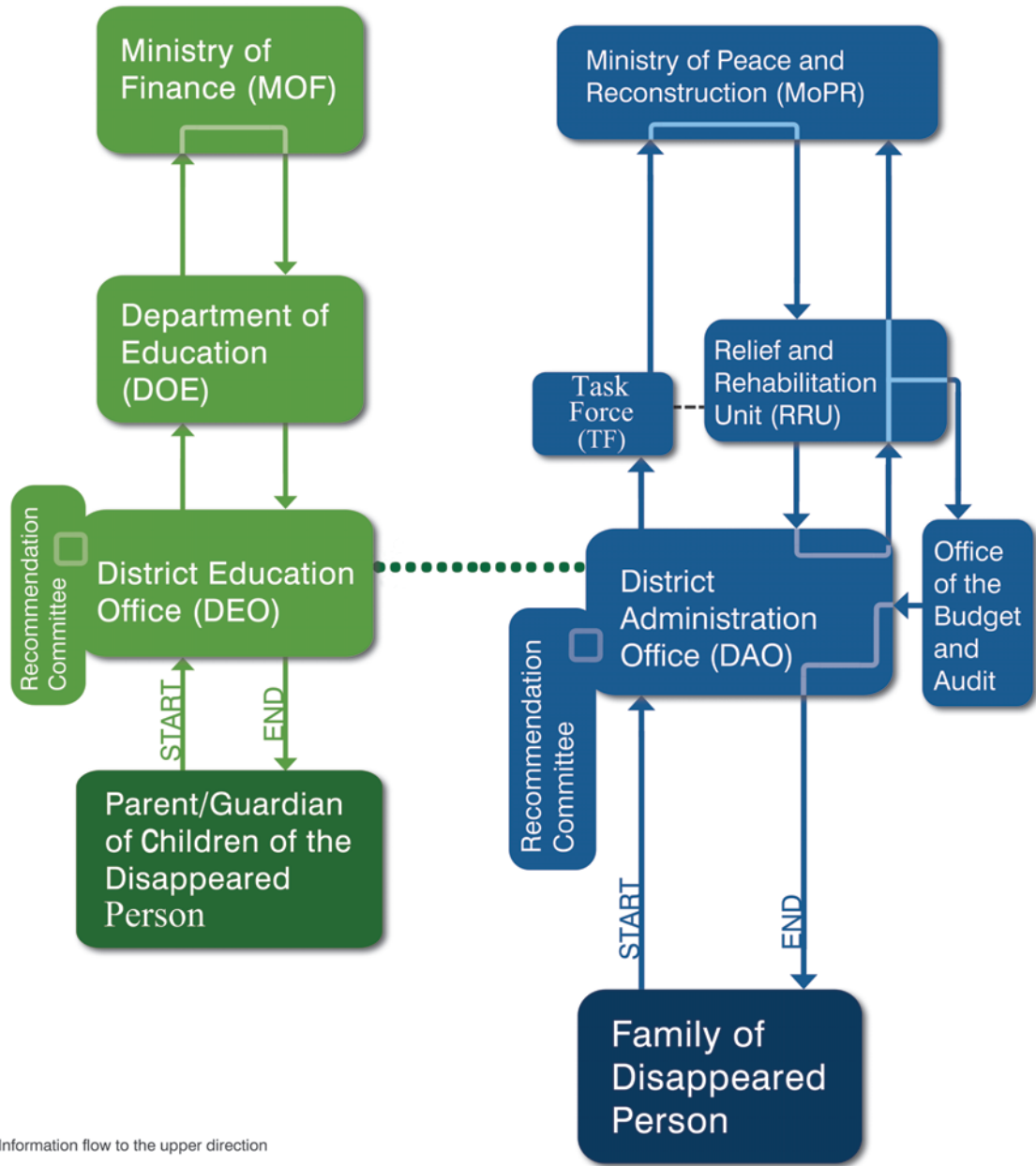









- Information flow to the upper direction
- Information flow to the lower direction
- Informal relationship
- Information sharing
- Relevant committee
- 'U' turn

Process of Receiving Treatment or Reimbursement for Injured Victims

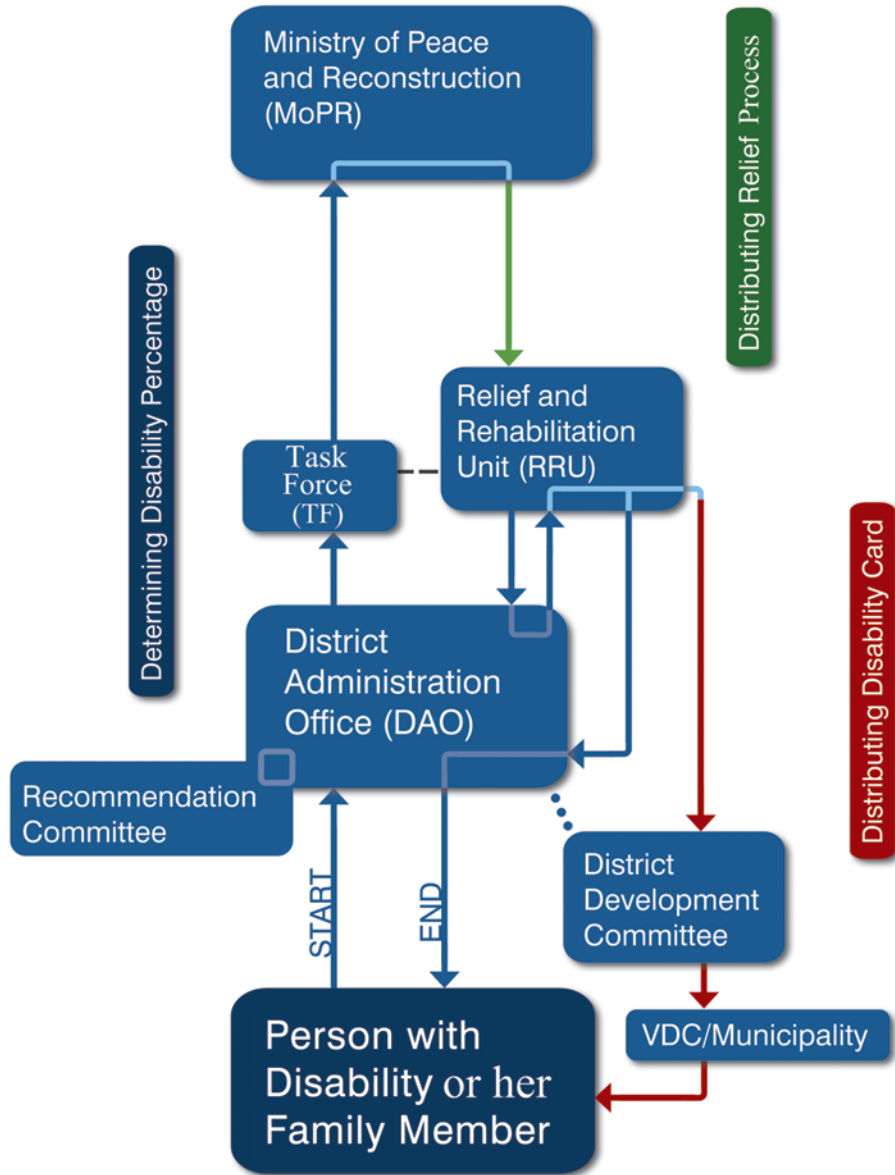


Relief Process for Family of Disappeared Person



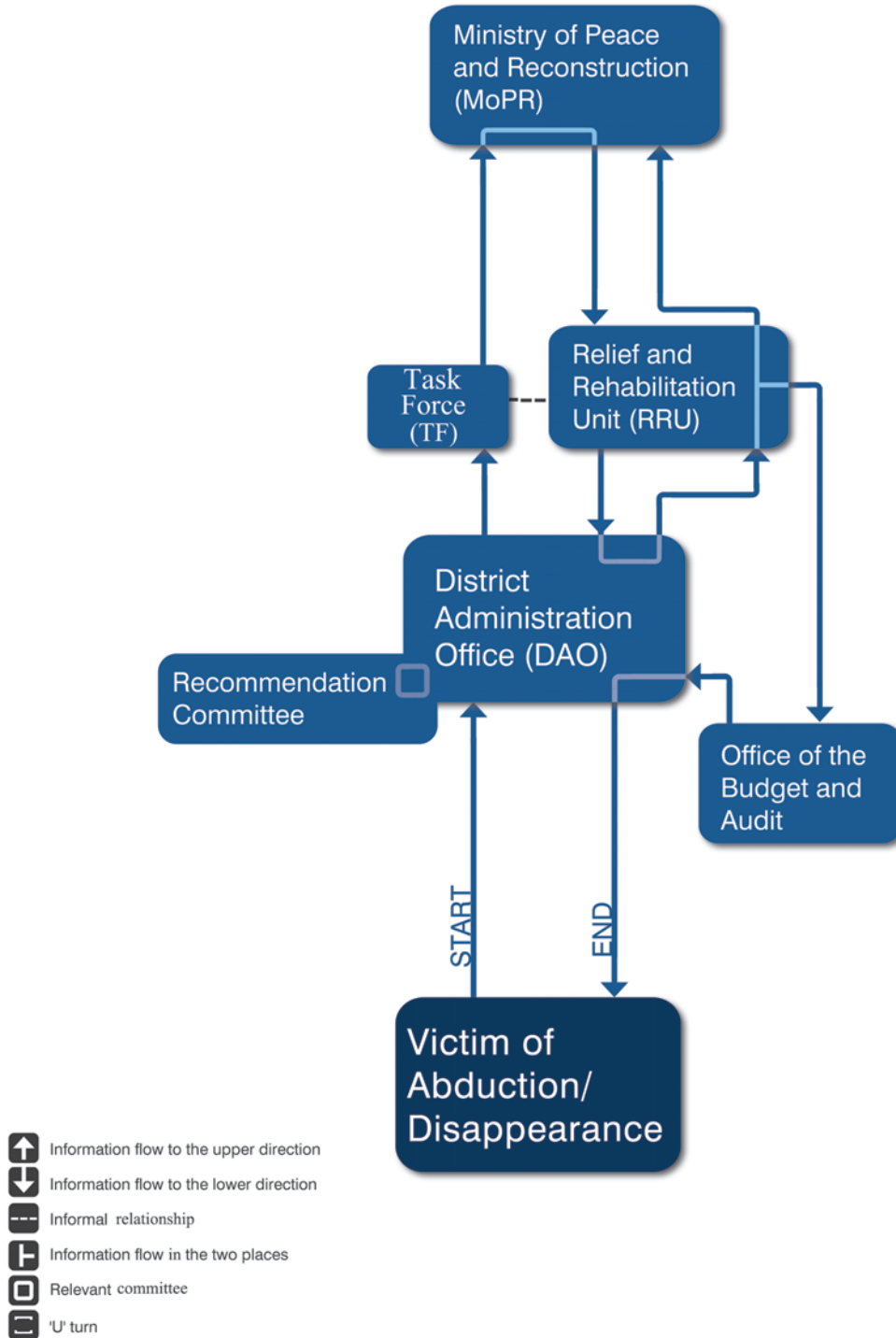
-  Information flow to the upper direction
-  Information flow to the lower direction
-  Informal relationship
-  Information sharing
-  Information flow at the two places
-  Relevant committee
-  'U' turn

Relief Process for Person with Disability



- Information flow to the upper direction
- Information flow to the lower direction
- Informal relationship
- Information sharing
- Information flow at the two places
- Relevant committee
- 'U' turn

Relief Process for Victim of Abduction or Disappearance for More than 30 Days

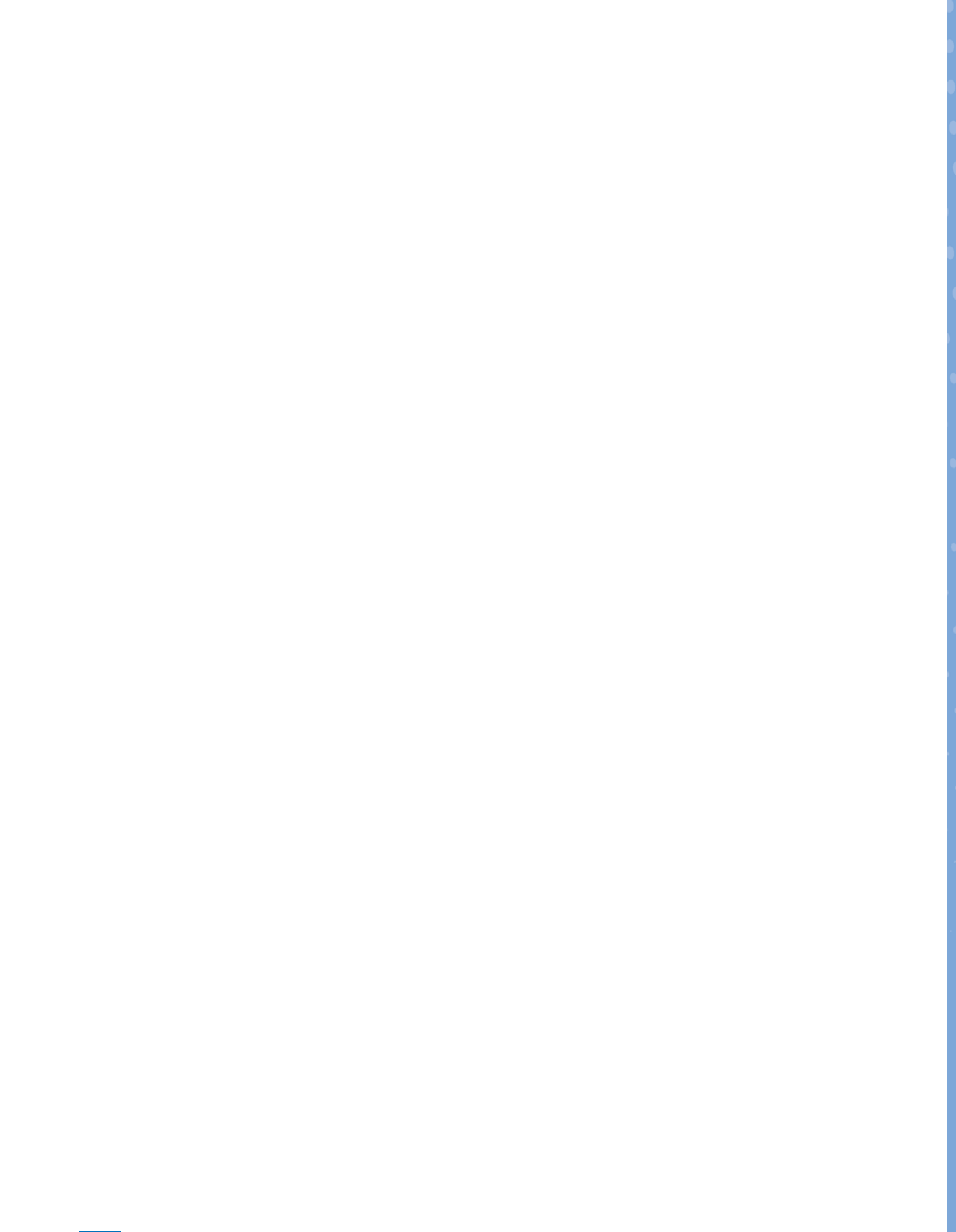


Annex II

Name of Researchers and Research Districts

S.N.	Researchers	District	Development Region
	Poonam Sijapati	Kailali	Far West
	Ram Dutta Joshi	Dadeldhura	Far West
	Rita Rawal	Janjarkot	Mid West
	Kashiram Dagi	Rolpa	Mid West
	Hari Gautam	Rukum	Mid West
	Kalpana Paudel	Tanahu	Western
	Keshav Khanal	Syangja	Western
	Rupesh Shah	Sunsari	Eastern
	Shanti Pasman	Siraha	Eastern
	Gopal Pokhrel	Jhapa	Eastern
	Pratiksha Paudel	Lamjung	Western
	Gita Rasaili	Kavre	Central
	Kumari Waiba	Makwanpur	Central
	Anand Dahal	Sindhuli	Central
	Pratima Dhakal	Dhanusha	Central
	Iswari Kafle	Mahotari	Central
	Bhawani Koirala	Sarlahi	Central
	Tika Nath Kadel	Dharding	Central

**From Relief to Reparations:
Listening to the Voices of Victims**



About ICTJ

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies. For more information, see www.ictj.org.

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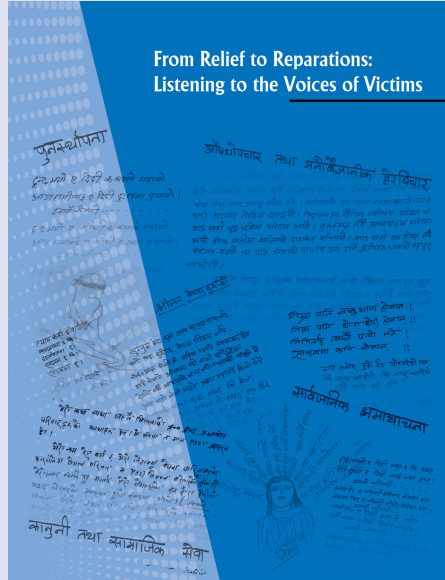
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The cover page depicts poetry, stories, and art created by victims from across Nepal.

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