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Relief, Reparations, and the Root Causes of Conflict in Nepal

Ruben Carranza

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Cover: **Ruinibang, Nepal**. Local children listen to their teacher in a government run school, in Ruinibang, a Maoist village Western Terai district. Jonathan Alpeyrie/Getty.

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About ICTJ

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice measures, including criminal prosecutions, reparations initiatives, truth seeking, memorialization efforts, and institutional reform. For more information, visit www.ictj.org.

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ABBREVIATIONS AND ACRONYMS

CDO	Chief District Officer
COID	Commission of Inquiry on Disappearances
CPA	Comprehensive Peace Agreement
DFID-WB	Department for International Development and the World Bank
IDP	Internally Displaced Persons
IPR	Interim Relief Program
MoPR	(Nepal) Ministry of Peace and Reconstruction
NPR	Nepalese Rupee
NPTF	Nepal Peace Trust Fund
TC	Truth Commission
TRC	(Peru) Truth and Reconciliation Commission
UN Guidelines	UN Basic Principles and Guidelines on a Right to Remedy and Reparations
UNPFN	UN Peace Fund for Nepal

Transitional Justice in the Context of Political and Economic Difficulty

At the end of 2011, Nepal's Maoist-led coalition government reaffirmed a commitment to establish a truth commission and pursue other transitional justice measures that were promised in the 2006 Comprehensive Peace Agreement (CPA), which formally ended ten years of armed conflict. Among the various possible transitional justice measures contemplated since the agreement, only an interim relief program (IRP) administered by the government's Ministry of Peace and Reconstruction (MoPR) has so far been implemented. This program, which followed earlier assistance for the internally displaced, is an important starting point for reflecting on the relationship among reparations, the needs of victims, and the root causes of the conflict in Nepal.

In 2007, after the signing of the CPA, the Nepali government created a multi-agency task force to collect data on the number of victims of the conflict and on the basis of draft guidelines for the IRP, which were approved the following year.¹ After commencing in 2008, the IRP was due to be completed by July 2010; however, the processing of applications is now set to end in October 2012. Specific follow-up measures, including the provision of employment services to victims of the armed conflict, are being piloted in 12 districts. Other measures like the provision of benefits to children orphaned due to the conflict have yet to be fully implemented.² So far, the IRP has provided benefits to over 30,000 people who were categorized as "conflict victims" and approximately 80,000 internally displaced persons (IDPs). In the six years since the peace agreement was signed, and throughout the implementation of the IRP, Nepal has had a succession of fragile coalition governments. The country's Constituent Assembly has been dissolved without completing its task of drafting a new constitution. Measures to establish a Truth Commission (TC) and a separate Commission of Inquiry on Disappearances (COID) remain pending, as provisions that could provide amnesty for perpetrators of serious human rights violations related to the conflict have been opposed by victims, human rights advocates, and the international community.

Given the political instability and economic difficulties facing Nepal, the implementation of the IRP was a remarkable step forward, taken just two years after the signing of the peace agreement. While political pressure and financial backing from the international community were important contributing factors, offering relief within that short period of time would not have been possible without political will on the part of the Nepali government. The IRP demonstrated that some of the needs of victims could be addressed even in a

¹ The Guidelines for Economic Assistance and Relief for Conflict Victims were drafted in 2008 and required that relief be distributed within a two-year period or until 2010.

² The MoPR is drafting additional guidelines proposing further benefits for children orphaned due to the conflict.

politically unstable and resource-challenged post-conflict setting. There is no doubt that the program offered material benefits to a significant number of victims and provided valuable lessons for the government and other parties in how the state can engage with victims of human rights violations.

However, the process by which interim relief measures were distributed and the general lack of acknowledgement of state accountability in the measures to date has meant that the IRP, despite its merits, has not fully responded to the needs of all victims. An ICTJ publication, “From Relief to Reparations: Listening to the Voices of Victims,” analyzes in greater detail how the IRP was implemented and the experiences of victims with the program.³

This paper will discuss the underlying assumptions of the IRP. First, it will examine whether the IRP can be considered a reparations program, given the extent of victim participation and the nature of the benefits that were offered. Second, it will explain why relief cannot be a substitute for reparations and why the absence of an admission of state responsibility for certain crimes (and corresponding justice and accountability mechanisms) has eroded the impact of the IRP. Third, in addition to examining the benefits that were offered in the IRP and earlier programs for IDPs relating to property loss and destruction, this paper will discuss the importance of taking steps beyond relief and consider how reparations can contribute to addressing the root causes of the armed conflict in Nepal.

³ ICTJ, “From Relief to Reparations: Listening to the Voices of Victims,” 2011. <http://ictj.org/publication/relief-reparations-listening-voices-victims>

Is the Interim Relief Program a Reparations Program?

Nepal's IRP has offered victims the following benefits:⁴

1. NPR 100,000 Nepalese rupees (approximately US \$1,400 in 2008) to the nearest beneficiary of those who were killed, or who were forcibly disappeared by parties to the conflict.
2. NPR 25,000 each to the widows of men who died or the wives of those who were forcibly disappeared during the conflict (in addition to the NPR 100,000 above).
3. "Scholarships" for children of persons killed, forcibly disappeared, or seriously disabled during the conflict.
4. Reimbursement of medical expenses or treatment at a government hospital for a specified level of disability or injury resulting from the conflict.
5. Skills development training for eligible conflict victims.
6. Compensation for persons and institutions whose real or personal property was lost or damaged during the conflict.

While these measures cover two important categories of victims—those who were killed and forcibly disappeared—and offer a range of packages, the predominant form of relief is financial compensation to the survivor or to the victim's family. The government's decision to compensate victims for the impact of violations primarily with money is clear in the evolution of the IRP guidelines. In an earlier version of the IRP guidelines, families of those who were killed were offered NPR 100,000, while families of forcibly disappeared persons were only offered NPR 25,000.⁵ The difference seems to have been based on an assumption that the "missing" person could reappear and, thus, the economic loss to the family would only be temporary. This prompted families of the forcibly disappeared to complain, and many said they were compelled to claim their family member as deceased in order to receive the higher amount.⁶ Also under the guidelines, widows of men who were killed and wives of disappeared husbands were not eligible to receive the NPR 25,000 compensation if they had remarried.⁷

Children of victims are eligible for scholarships in the form of fixed sums of money sent to the district government by the state, which is then paid to parents/guardian of those children. As described in "From Relief to Reparations: Listening to the Voices of Victims" and as confirmed by officials of the Department of Education met by ICTJ,⁸ the sum provided was insufficient to cover the number of children who qualified, so eligible families have been compelled to advance school fees or cover unpaid balances. There has been no unqualified recognition by the state of its responsibility for the death or disappearance that led to a family's inability to send their children to school.

Even taking into account the IRP's limited financial capacity to cover the full cost of providing scholarships to all eligible children, the government has not used the program to make symbolic gestures that

⁴ Discussed in "From Relief to Reparations: Listening to the Voices of Victims."

⁵ In the original IRP guidelines issued in 2008, paragraph five of the section entitled "Financial assistance to the abductees and disappeared," stated that when an "innocent citizen (is) proven to be abducted and disappeared. . . for more than 30 days, (the) close relative of the victim of such abduction and disappearance shall receive the consolidated sum of NPR 25,000 from the state as relief."

⁶ From the author's notes: These sentiments were expressed to ICTJ and to its partner organizations in several meetings conducted with victims' groups and civil society organizations between 2008 and 2010. In January 2010, at a meeting with the MoPR Relief and Rehabilitation Unit and the multi-agency task force responsible for processing applications for relief under the IRP, the government acknowledged this problem. The task force also noted that some families had applied for relief under both categories, to ensure that they could receive the greater amount. Also see the discussion on this matter, on page 16 of "Listening to the Voices of Victims."

⁷ Paragraph 1.3 of the 2008 version of the IRP entitled "Economic assistance to widows" states: "If the wife of the deceased has remarried, such assistance amount shall not be provided. While recommending for such economic assistance, recommendation shall be made only after ascertaining whether the person has remarried or not." This provision has not been amended in subsequent versions.

⁸ From the author's notes: In November 2010, ICTJ conducted a workshop in Kathmandu with government officials from various ministries and agencies responsible for different components of the IRP, including those from the Department of Education responsible for budgeting and disbursing scholarships.

would honor the victims and their families. For example, the scholarship is not named after a prominent conflict victim, as ICTJ and other civil society organizations have suggested to Nepali policymakers, and the program is not linked to more meaningful material measures, like prioritizing the construction of schools in districts severely affected by conflict. (By comparison, the government has prioritized the reconstruction of police stations in some of these districts.)

None of the benefits in the IRP were accompanied by material or symbolic measures that explicitly acknowledge the loss and continued suffering of victims and their families—particularly families of the forcibly disappeared. The IRP was designed for “conflict victims” and not necessarily victims of violations of human rights or international humanitarian law. This has resulted in the program blurring the distinction between those killed or injured as a consequence of the legitimate use of force while acting as combatants and those killed or injured as a consequence of human rights violations. Because it is not a program meant to recognize victims of human rights violations as such, the IRP has been able to selectively (even arbitrarily) exclude certain human rights violations, such as torture and sexual violence, while offering relief for certain material harms to “conflict victims” who endured quite different suffering and hardships to those whose family members were killed, disappeared or, being landless, were displaced. For example, compensation was given to property owners who could not collect rent or their share of agricultural harvests, business owners whose buildings or vehicles were used by combatants, and even those who were injured in demonstrations or strikes (*bandhas*) that continue to break out in Nepal after the CPA.

The Absence of Accountability and Failure to Acknowledge State Responsibility

It is important to note the distinction between relief and reparations. Reparations recognize that rights have been violated and that the state is obligated to repair the consequences of the violation. Relief is the immediate assistance offered to those affected by man-made or natural disasters, where the goal is simply to relieve recipients of the extraordinary physical burdens brought on by an emergency or to help them deal with the immediate aftermath of the disaster. Relief is important and useful for victims but it cannot be a substitute for reparations.

The IRP does not fulfill the victims' right to reparations, not only because it does not treat beneficiaries as victims of human rights violations, but also because it does not acknowledge the state's responsibility for those violations. Reparations is founded on the recognition by the state of its responsibility to repair the harm to victims by violations that the state could have prevented or those for which it can be directly attributed. In the language of the 2005 *UN Basic Principles and Guidelines on a Right to Remedy and Reparations* (UN Guidelines), the provision of reparations "is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law."⁹ Reparations are a justice mechanism, not simply a means to relieve victims of the material difficulties that accompany an armed conflict.

The UN Guidelines state that reparations must be "adequate, effective, and prompt." The relatively quick implementation of Nepal's IRP meets part of this standard. However, the absence of any measure within the program that recognizes state responsibility and the lack of a link outside the program to other mechanisms that give effect to that recognition of responsibility—such as a good faith effort by the government to determine the whereabouts of the forcibly disappeared or to prosecute perpetrators of killings related to the conflict—makes the IRP inadequate and ineffective as a means of repairing human rights violations.

The government could have introduced measures through which the injustices suffered by survivors or victims were acknowledged by offering appropriate services and material measures (other than money). For example, the government could have offered legal assistance to families of the forcibly disappeared so that they could address the legal consequences of the disappearance on their personal status, livelihood, and property.¹⁰ The government also could have accompanied compensation with symbolic gestures that acknowledged state responsibility. For example, the government could have held public ceremonies that named or honored those who died. Instead, the government has paid claimants through the Chief District Officer (CDO), the highest administrative officer in district-based Nepal's political subdivision, or deposited funds directly into personal bank accounts, without any indication or acknowledgement that payments were related to gross human rights violations.¹¹

Ongoing efforts to establish a TC and COID, which in the ordinance submitted by the government to the president for signature in August 2012 were combined into one, offer another opportunity for the state to acknowledge its responsibility, through the truth-seeking process and in the reparations measures that these

⁹ 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, adopted by General Assembly Resolution 60/147 of Dec. 16, 2005, <http://www.unhcr.org/refworld/docid/4721cb942.html>

¹⁰ For further discussion of the needs of the families of the disappeared, see Simon Robins, "An assessment of the needs of families of the Missing in Nepal" (ICRC, April 2009).

¹¹ In a discussion with a CDO in 2010, the official told the author that he did not have time to actually see most of the recipients, hear what they have to say about their experiences, or express any sentiment on behalf of the government.

commissions can recommend. Doing so would be an important way to make up for the failure and inability of the government so far to incorporate an acknowledgment of state responsibility into the IRP.

However, there are indications that some of Nepal's political leaders view the TC and COID as a means of avoiding accountability and diluting any acknowledgement of state responsibility. One indication is the emphasis on reconciliation in the proposals that shift the burden of acknowledging responsibility from the state to individual perpetrators. Another is the ongoing attempt to introduce provisions that would empower a TC to make recommendations for amnesty, which in some versions, including the recent draft ordinance, includes amnesty for serious violations that cannot be amnestied under international law.

Since 2008, different versions of the bills and the recent ordinance have incorporated a provision in which the TC can facilitate "reconciliation." But reconciliation is a vague concept in transitional justice; when linked to amnesty or made a condition for receiving reparations, it can reinforce impunity.¹² For example, in Indonesia, a 2004 truth commission law required that before victims could receive reparations they consent to granting amnesty to individual perpetrators. Not only was this specific requirement declared unconstitutional by Indonesia's highest court, but the entire law was declared unconstitutional, removing the legal basis to establish a truth commission.¹³ The proposed Nepal TC bill gives the commission the role of "caus(ing) reconciliation to be made." This proposal shifts responsibility for violations from the state to individual perpetrators, who are required to apologize, "provide reasonable compensation," and take part in "reconciliation functions." In response to concerns from civil society, including ICTJ, that this amounts to requiring victims to reconcile with perpetrators, the government added a clause stating that "notwithstanding anything contained elsewhere in this section, reconciliation cannot be made without the consent of the victim." While this qualification is important, the emphasis still remains on the responsibility of individual perpetrators without adequately addressing the responsibility of the state. It provides little assurance that future reparations recommendations will be based on state responsibility.

The TC and COID bills and the subsequent ordinance have a provision that allows the commissions to propose specific forms of reparations to the government.¹⁴ It also includes a provision that neither the receipt of compensation from individual perpetrators nor a recommendation for amnesty for perpetrators will preclude victims from receiving reparations.

The draft provision does not mention symbolic reparations or other noncompensation measures that the state, rather than the perpetrator(s), could take to recognize victims of human rights violations. The proposed provision on reconciliation contains a reference to establishing "memorials . . . with the involve-

¹² For further discussion of the implications of amnesty to reconciliation in the draft TC and COID bills, see *Navigating Amnesty and Reconciliation in Nepal's Truth and Reconciliation Commission Bill*. <http://ictj.org/publication/navigating-amnesty-and-reconciliation-nepal%E2%80%99s-truth-and-reconciliation-commission-bill>

¹³ For further discussion of efforts in Indonesia to establish a truth commission, obtain reparations, and pursue criminal accountability since the end of the Suharto regime, see ICTJ and Kontra S., *Derailed: Transitional Justice in Indonesia since the Fall of Suharto*. <http://ictj.org/publication/derailed-transitional-justice-indonesia-fall-soeharto-report>

¹⁴ Based on ICTJ's unofficial English translation, it states: "Section 24. To recommend for Reparation:
(1) The Commission shall, if it is found necessary to cause the confiscated or seized property of the victim to be returned to him/her and provide any type of relief, compensation or any other facility in the form of reparations to the victim through inquiry and investigation carried out in accordance with this Act, make recommendations to the Government of Nepal.
(2) Notwithstanding anything contained in Sub-section (1), the Commission may, if it deems appropriate, make recommendations to the Government of Nepal to provide facilities or concessions, in the form of reparations to the victim or as per situation, any member of his/her family as follows:
(a) Free education and health-care facilities;
(b) Skill-oriented training;
(c) Loan facilities without or with concessional interests;
(d) Arrangements of habitation;
(e) Employment facilities;
(f) Facilities regarding restitution and rehabilitation;
(g) Other facilities or concessions as deemed appropriate by the Commission.

ment of the perpetrator and victim”, again implying that the burden of acknowledging responsibility belongs to the perpetrator, and not to the state. It is also cause for concern that measures to address the status of the disappeared and assist families in locating forcibly disappeared persons are likewise not mentioned as forms of reparations.

The persistent effort by some Nepali political leaders to introduce amnesty provisions for perpetrators into the proposed truth-seeking measures reinforces concerns about an outcome in which reparations are offered in exchange for impunity. Speaking for the major political parties drafting the legislation, one political leader has said that the parties “agreed to go for reconciliation and amnesty instead of prosecution for all kinds of crimes because this is what we believe is key to securing lasting peace.”¹⁵ Granting amnesty for serious human rights violations that are considered crimes under international law would severely undermine the value of any reparations measures, whether from the perpetrator or from the state. Similar amnesty-for-reparations bargains have led to unjust outcomes elsewhere, including in South Africa and Indonesia.¹⁶

¹⁵ Kamal Raj Sigdel, “Transitional justice: parties go for blanket amnesties,” December 17, 2011, <http://www.ekantipur.com/2011/12/17/top-story/transitional-justice-parties-go-for-blanket-amnesty/345662.html>

¹⁶ For a discussion on recent developments on amnesty and pardons in South Africa, see ICTJ, “Amnesty Does Not Erase the Truth,” <http://ictj.org/news/amnesty-does-not-erase-truth>; on the problematic relationship between amnesty and reparations, see ICTJ’s amicus brief “ICTJ Written Submission: Legality of Truth and Reconciliation Commission of Indonesia,” available at <http://ictj.org/publication/ictj-written-submission-legality-truth-and-reconciliation-commission>

Reparations and the Root Causes of Conflict in Nepal

A future reparations policy in Nepal should acknowledge that victims have suffered human rights violations (and are not just “conflict victims”) and that the state has a responsibility to address the consequences of these violations with survivors and victims’ families. Such a policy should not be founded on victims surrendering their right to the truth and justice in exchange for material reparations. It should address the root causes of violations, and not just the *consequences* of violations that took place within the fixed time period covered by the CPA, 1993–2003. In Nepal, and in other contexts where violations of social and economic rights have been as gross, systematic, and widespread as violations of civil and political rights during an armed conflict or under a dictatorship, reparations policies should be informed by, and contribute to redressing, the root causes of the broader range of human rights violations.

A 2002-2005 study by the UK Department for International Development and the World Bank (DFID-WB study) found that Nepal’s 2,000-year old caste and ethnic hierarchies systematically excluded members of the lowest Hindu caste, known as Dalits, as well as members of non-Hindu ethnic groups, or Janajatis, from economic and social opportunities and political empowerment.¹⁷ The study concluded that the caste system consigns Dalits and Janajatis to poverty, denying them access to livelihood, property, health care, and education. The system has a particularly negative impact on women, restricting their access to land and other economic opportunities and making them more vulnerable to trafficking and sexual exploitation. The DFID-WB study concluded that when:

the Communist Party of Nepal (Maoist), launched its ‘People’s War’ in February 1996 and included the persisting caste, ethnic and gender-based disparities in its political agenda . . . they [were] able to provide important symbolic recognition to disaffected women, Dalits and Janajatis and to bring their demands into public debate.¹⁸

The importance of recognizing the experiences of Dalits and Janajatis in a future reparations policy cannot be overstated. These communities suffered disproportionately from violence committed by state and non-state actors during the conflict, as well as violations of their economic and social rights both during and *before* the conflict. Dalits and Janajatis constitute more than half of Nepal’s population of 30 million; but Dalits own less than 1% of land in the country, have a ten-year lesser life expectancy than higher-caste Nepali, and earn 80% less than the average Nepali per capita income of US \$210.¹⁹ Most Dalits and Janajatis survive as landless farmworkers indebted to their landowners. Their poverty and lack of social and political power made them more vulnerable than others in Nepal to abuse and violence committed during the conflict. The DFID-WB study found:

the lack of opportunities to earn cash income as [their] greatest constraint. This was cited as a reason for removing children from school and for not being able to send a family member overseas for employment. Lack of income prevented some from seeking health care and from benefiting from development interventions, including the opportunity to attend training. Lack of income also prevented some from taking out loans because, in spite of the ubiquity of savings and credit groups, membership generally

¹⁷ World Bank, “Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal,” 2006, available at <http://documents.worldbank.org/curated/en/2006/04/7245805/unequal-citizens-gender-caste-ethnic-exclusion-nepal-vol-1-2-summary>

¹⁸ *Ibid.*, at 4.

¹⁹ Rajeev Goyal, Puja Dhawan, and Smita Narula, “The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal,” (2005, NYU Center for Human Rights and Global Justice).

depends on being able to meet the group's agreed level of weekly cash contributions to the saving pool.²⁰

A 2003 USAID-commissioned study concluded that while caste and ethnicity were a significant “contributing factor” to the growth of the Maoist movement, it was driven by “grinding poverty” and economic marginalization.²¹ Recent constitutional and legislative measures in Nepal intended to prohibit discrimination may improve the situation of Dalits and lower-caste communities in the future,²² but they will not undo the harm caused by the widespread and systematic violations of social and economic rights committed in the past, for which victims are entitled to a remedy and reparations. The caste system is an example of what the UN Guidelines refers to as “contemporary forms of victimization, (which) while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively.”

Given the root causes of the conflict and the types of violations suffered by victims, including the most marginalized, a future reparations policy should consider whether the emphasis on individualized reparations measures in both the IRP and the proposed TC and COID laws and the reliance on one-time payments will be sufficient. One of the most important objectives of a reparations policy is establishing “civic trust” so that victims will believe in the ability and willingness of state institutions to address their grievances. A reparations policy acknowledging that Dalits and Janajatis were deliberately denied basic social and economic rights and that specific communities were targeted in violence committed by state and non-state actors would help to build or restore civic trust.

A “collective” or “community” approach to reparations has been attempted in some countries, like Morocco, and proposed in other contexts, including the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia (Khmer Rouge tribunal). While it is too early to make generalizations about collective reparations (the Moroccan example only began in 2008),²³ one example that Nepal can continue to learn from is Peru. (That a significant non-state actor in both the Peruvian and Nepali cases is a Maoist armed movement may be of some relevance, as noted by the 2003 USAID study.)

The Peruvian Truth and Reconciliation Commission (TRC) clearly established the link between the economic and social exclusion suffered by victims and the violence they experienced from both state and non-state actors during the conflict. It found that:

there was a significant relationship between poverty and social exclusion and the probability of becoming a victim of violence . . . The TRC has established that the peasant (*campesina*) population was the principal victim of the violence. Of the total victims reported, 79 percent lived in rural areas and 56 percent were engaged in farming or livestock activities . . . the TRC has been able to discern that the process of violence, combined with socioeconomic gaps, highlighted the seriousness of ethno-cultural inequalities that still prevail in the country. According to analysis of the testimonies received, 75 percent of the victims who died in the internal armed conflict spoke Quechua or other native languages as their mother tongue. This figure contrasts tellingly with the fact that, according to the 1993 census, on a national level only 16 percent of the Peruvian population shares that characteristic . . . The TRC has established that the tragedy suffered by the populations of rural Peru, the Andean and jungle regions, Quechua and Ashaninka Peru, the peasant, poor, and poorly educated Peru, was neither felt nor taken on as its own by the rest of the country. This demonstrates, in the TRC's judgment, the veiled

²⁰ Unequal Citizens, at 36.

²¹ Robert Gersony, *Sowing the Wind: History and Dynamics of the Maoist Revolt in Nepal's Rapti Hills* (2003).

²² See UN News Centre, “Nepal: UN welcomes new law on caste-based discrimination,” May 25, 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=38496#.UGm7SU3A9c4>

²³ For a detailed comparative discussion of collective reparations, see Ruben Carranza and Julie Guillerot, “The Rabat Report: The Concept and Challenges of Collective Reparations” (ICTJ, 2009), available at <http://ictj.org/publication/rabat-report-concept-and-challenges-collective-reparations>

racism and scornful attitudes that persist in Peruvian society almost two centuries after its birth as a republic.”²⁴

Peru’s reparations policy has prioritized the implementation of community reparations. Since 2007, the government has identified some 1,600 rural communities (that include more than 700,000 people) as having been disproportionately affected by violence. Each community has received approximately US \$35,000. These communities can choose to invest this sum in “(1) the reconstruction of economic, productive, and commercial infrastructure or access to economic opportunities, or (2) the recovery and expansion of basic services in education, health, sanitation, rural electrification, recovery of community heritage, and other projects in which the collective has a stake.”²⁵

In Nepal, a future reparations policy will have to consider whether a combination of community and individualized *but long-term* reparations measures are more appropriate, given the length and severity of violations suffered by Dalit and Janajati victims. This will require the state to identify and register victims according to their economic status, caste, and ethnicity—an approach that was not followed by the IRP. Applications for the IRP did not ask whether victims had income or land, or a prior experience that would constitute a human rights violation—such as sexual violence or the denial of social or economic rights. The government did not disaggregate victim information according to caste or ethnicity, while gender was only regarded as relevant with respect to identifying the widows or wives of those who were killed or forcibly disappeared.

A reparations policy informed by the root causes of the conflict, that addresses social and economic rights violations (alongside violations involving armed violence), is consistent with the CPA, which provides Nepal’s post-conflict transitional justice framework. The CPA recognizes the need to relieve victims of the harms caused by violence committed during the conflict, and the IRP was a product of that recognition. But the CPA also recognizes that, both before and during the conflict, there were violations of social, economic, and cultural rights, including inequitable land distribution;²⁶ discrimination based on class, caste, and gender;²⁷ and the undemocratic rule of the monarchy.²⁸ In addition, the CPA commits its parties to respect the full range of human rights violations and recognizes that economic, social, and cultural rights, including the right to food, health, education, and social security, were violated in the past.²⁹

The CPA states –

3.5 In order to end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities (Janajatis), Terai communities (Madheshis), oppressed, neglected and minority communities and the backward areas by deconstructing the current centralised and unitary structure, the state shall be restructured in an inclusive, democratic and forward looking manner.

Issues involving land and reparations are always complicated by the tension between respect for private property and the importance of transforming economic relations that make people vulnerable to human

²⁴ Final Report, Peru’s Truth and Reconciliation Commission, 2003, available at <http://www.cverdad.org.pe/ingles/pagina01.php>

²⁵ ICTJ internal report on the status of collective reparations in Peru (2011).

²⁶ See par 3.6, 3.7, and 3.10 of the CPA.

²⁷ See par 3.5 and 3.10 of the CPA.

²⁸ See par 3.3 and 3.5 of the CPA. “No state powers shall remain with the king. The properties owned by the late King Birendra, the late Queen Aishwarya and their family members . . . shall be brought under the control of the Government of Nepal and used in the interest of the nation through a trust. All properties (such as palaces at various places, forests and National Parks, heritages of historical and archaeological significance etc.) acquired by King Gyanendra in his monarchical capacity shall be nationalised.”

²⁹ See par 7.5 of the CPA.

rights violations. In Nepal's case, it will be impossible to deal with property violations—such as the confiscation or takeover of land by Maoist rebels—without also addressing deeply entrenched inequity in the distribution of land, the exploitation of landless labor, and how the tight control of political power by certain castes and families have been mutually reinforcing factors throughout Nepal's feudal history.

The international community has played a decisive role in the implementation of the IRP, and only the same kind of support can lead to achieving the CPA's strategic goals, including addressing the root causes of conflict in Nepal. The World Bank provided Nepal with a USD \$50 million grant in 2008,³⁰ of which US \$23 million was used for relief programs, with the remainder allocated to reintegration allowances for former Maoist combatants in UN-monitored cantonments. The Bank's role as both catalyst and donor in the effort to address the needs of victims made relief possible. The Bank recently acknowledged the relationship between development, justice, and security in its 2011 World Development Report,³¹ which gives a positive indication that the Bank may be willing to play a greater role not only in supporting reparations, but also in providing the kind of catalyzing support that can link transitional justice mechanisms with long-term development goals. Similarly, the support that donor governments gave to the IRP, through the Nepal Peace Trust Fund (NPTF) and the UN Peace Fund for Nepal (UNPFN), shows that the international community is willing to provide material recognition and support when it sees genuine concern for and the political will to respond to victims' needs. Going forward, the international community's role will be critical in ensuring that an integrated approach to transitional justice is taken in Nepal and that the right to reparations is respected and not used in efforts to maintain impunity. Similarly, it will be important for survivors, victims groups, civil society organizations, and victims' advocates among national and international policymakers to not only engage with the ongoing transitional justice process in Nepal, but use it as a strategic opportunity to address some of the root causes of conflict in Nepal's still unfinished transition.

³⁰ World Bank, "Emergency Project Paper for a Proposed Grant in the amount of SDR 31.3 Million (\$US 50 Million equivalent) to Nepal for an Emergency Peace Support Project," April 21, 2008. The paper states "the project would explicitly help to (i) facilitate peace building . . . and (ii) establish and/or preserve human, institutional, and/or social capital, including economic reintegration of vulnerable groups."

³¹ World Bank, "The World Development Report 2011: Conflict, Security and Development" (2011), available at http://siteresources.worldbank.org/INTWDR5/Resources/WDR2011_Full_Text.pdf

Conclusion

Reparations programs are most effective and meaningful when integrated with truth seeking and accountability. The right to reparations is not dependent on the establishment of a truth commission, or on the prosecution of perpetrators of violations, but reparations programs are likely to be more effective if these measures are in place. A relief program that does not include measures to acknowledge the accountability of state and non-state actors, or information about the forcibly disappeared, and the circumstances in which other violations were committed, and the investigation and prosecution of the individuals responsible for the most serious crimes, falls very short of the international standards articulated in the *UN Basic Principles and Guidelines on a Right to Remedy and Reparations*.

Future reparations measures should address the absence of victim participation, and non-monetary and symbolic reparations in previous relief programs. A reparations program will be more meaningful if it allows victims and civil society representatives to participate in deciding and implementing the program's policies. Combining non-compensation material measures, like services that take into account victims' social, economic, and cultural conditions, gender, and needs over time, with financial assistance over a longer period (rather than a one-time lump sum) may be more sustainable and helpful. Symbolic measures such as memorials, commemorations, and official apologies should be incorporated in any future reparations mechanism. An integrated approach to reparations should also include opportunities to learn the truth and ensure both state and non-state perpetrators accept their responsibility for their actions.

The peace agreement calls for reparations that address both the causes and consequences of conflict and injustice. The combination of chronic poverty and social inequality in Nepal should not be ignored by the application of transitional justice mechanisms. Reparations programs should have an impact on and be informed by the social and economic conditions of the victims they intend to repair. A broader approach to reparations, one that looks at the circumstances that may have made victims vulnerable to violations, would consider the causes of conflict, the social and economic conditions of potential beneficiaries—including communities and groups that might benefit from collective reparations—and how these may overlap with long-neglected health, education, and other development needs.

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