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**TRANSITIONAL
JUSTICE**



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NEPALI VOICES

Perceptions of Truth, Justice, Reconciliation,
Reparations and The Transition in Nepal.

the *International
Center for Transitional
Justice* and the
Advocacy Forum,
Kathmandu, Nepal

March 2008



Above: Display of disappeared persons at a sit-in protest by family members of the disappeared. Kathmandu 2004. *Photo by Usha Titikshu/Sangya.*

Front Cover: Victims march towards the Ministry of Peace and Reconstruction in Kathmandu to deliver a petition demanding that both a Truth and Reconciliation Commission (TRC) and a Disappearance Commission not be established via ordinance. The petition also called for dialogue and consultations to be carried out with victims groups prior to the establishment of these two bodies. March 2008.

The sign in the picture reads: *"We demand the formation of a Truth and Reconciliation Commission by law and a TRC that ensures no amnesty for perpetrators of gross human rights violations"*
Photo by Carla Fajardo.

About the Authors

The International Center for Transitional Justice

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocities or human-rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional-justice approaches, including both judicial and nonjudicial responses to human-rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice, comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through non-judicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so.

Advocacy Forum

Advocacy Forum (AF) is a leading nonprofit, nongovernmental organization working to promote the rule of law and uphold international human-rights standards in Nepal. Established in 2001, AF is actively confronting the culture of impunity that has thrived for decades by systematically documenting human-rights violations/abuses, formally building cases, and monitoring detention centers. The information AF collects is published and presented to national and international audiences, and this provides evidence for the necessary reforms needed to the justice system of Nepal. To engage internationally recognized legal mechanisms, AF regularly extends its findings into the international human-rights realm, working closely with Amnesty International, Human Rights Watch, the International Commission of Jurists, the Asian Human Rights Commission and the World Organization against Torture. AF played an active role in lobbying for the establishment of the Office of the High Commissioner for Human Rights (OHCHR) in Nepal. With the help of these and other concerned agencies, AF has put Nepal at the forefront of significant human-rights-related attention. AF has taken the signing of the Comprehensive Peace Agreement as an opportunity to advance the national debate and discussions on transitional-justice issues. AF has been actively lobbying for comprehensive transitional-justice mechanisms in the country.

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Finally we would like thank the Danish and Norwegian embassies and DANIDA-HUGOU in Nepal, which made the study possible.

Research and Methodology

Objectives

The survey sought to ascertain the opinions and expectations of the victims and their families on a range of transitional-justice issues, such as human-rights violations, truth-seeking, justice, accountability, reparations, and reconciliation.

More specifically the objectives of the survey were to

- Understand the immediate needs and concerns of victims after the signing of the CPA;
- Capture opinions and attitudes about specific transitional-justice mechanisms, including justice, truth commissions, reconciliation, amnesty, and reparations.

Survey Questionnaire Design and Data Collection

The survey questionnaire was developed after a series of discussions at a two-day workshop organized in Kathmandu by Advocacy Forum and the International Center for Transitional Justice in May 2007. The workshop brought together a team of international and Nepali experts on transitional justice, survey research, human rights, law, anthropology, and the conflict. It aimed to develop a comprehensive transitional-justice questionnaire relevant to the Nepali context, and to provide training to the surveyors. A detailed questionnaire evolved with input from experts and human-rights representatives from Kathmandu and regions outside the capital. The survey questionnaire was originally designed in English and translated into Nepali.

A pilot survey was launched in the districts of Dhading and Kavre on May 20, 2007. Thirty nonstudy interviews were conducted. The pilot was instrumental in identifying gaps in the questionnaire, which was revised accordingly.

Sixteen teams of two persons each collected the data using the standardized questionnaire. Teams were randomly assigned to the districts. Out of 32 surveyors, 12—approximately one-third—were women. Selection of the surveyors started in April 2006. An advertisement was posted on an online employment Web site. A total of 56 people applied, and all were invited for a personal interview. The selection process was designed to be both merit-based and as inclusive as possible, taking into consideration the wish to recruit women and individuals from various castes and ethnic groups. Other factors, including availability and time flexibility, were also taken into consideration. Of the 56, only five were from marginalized groups, and one was from the Madhes (Terai region of the southern plains).

All the surveyors participated in two trainings, one on the final version of the survey questionnaire, including ethics, and the other on the basic concepts of human rights and transitional justice. In gender-sensitive cases, women surveyors were assigned to conduct the interviews.

The final survey questionnaire consisted of a few open-ended questions. For these questions, surveyors were given a list of probable options for their reference. However, they were instructed

not to read out the options to respondents. When the surveyors were not certain about which response to check, they were asked to list it under the “others specify” category to facilitate recoding during the data analysis. At the beginning of each interview the surveyors used a standard format to obtain oral consent, and clearly explained the reasons for conducting the survey so as not to raise expectations.

Selection of the Survey Sites

Of the 75 districts in Nepal, 17 (see list in Annex 2) were selected for the survey. Final selection of the districts was based on variables such as to what extent they were affected by the conflict, diversity among the regions, accessibility, and language.

Victims and their families are the primary sources of information for specialized victim surveys that seek to gather data on their perceptions. It was decided to use the information on victims available in the databases of Advocacy Forum, the National Human Rights Commission, and the International Committee of the Red Cross (ICRC) to identify suitable households. On assessing the information available in these databases, we found that they constituted a reliable preliminary source for locating victims and their families. Through selective sampling, the research team identified 1,130 victim households in the databases. Selection of households was based on a family suffering one or more of the following four categories of human-rights violations: disappearance, extrajudicial killing, torture, and rape. Among the districts selected for the survey, the highest incidence of disappearances was reported in Banke and Bardiya.

The surveyors obtained 811 completed responses from the 1,130 households originally selected. The interviews were completed in October 2007. Given the changes in the political situation, the responses might differ slightly if the survey were carried out again.

Focus Group Discussions

In addition to the survey, 10 focus-group discussions (FGD) took place in the different districts and regional centers. The focus groups were divided thematically into Internally Displaced Persons (IDPs), women victims of sexual violence, child soldiers, and disappearances. There were separate discussions with marginalized communities, including Dalits, Janajatis (indigenous groups), Madhesis, and women. The number of participants for each focus group varied from 15 to 30. The FGDs were conducted in Biratnagar (Morang), Janakpur (Dhanusha), Kathmandu (Kathmandu), Pokhara (Kaski), Baglung (Baglung), Gulariya (Bardiya), Nepalgunj (Banke), Mahendranagar (Kanchanpur) and Birendranagar (Surkhet). Facilitators fluent in the local languages used a standard set of questions to ensure that the discussions remained focused and uniform. Women facilitators moderated the sessions on women victims and women’s groups.

The focus-group discussions centered on the causes of the conflict, the nature and extent of human-rights violations, the mechanisms required to address the past, and the potential framework for a truth commission in Nepal.

Statistical Analysis

The survey data were entered and analyzed using the Statistical Package for the Social Sciences (SPSS), software version 12.0. The focus-group discussions were entered and analyzed using Atlas.ti (Visual Qualitative Data Analysis, Management and Theory Building Software), version WIN 4.2.

Limitations

While the study was designed to be both quantitative and qualitative, certain limitations must be recognized.

(1) The questionnaire was translated only into Nepali and not any of the other languages spoken in the country. It was decided to use the Nepali version for all the survey interviews. However, the focus-group discussions were designed in different languages (Nepali, Maithili, Tharu) to enable the different linguistic groups to express their views in their own language.

(2) The survey was conducted in only 17 districts out of 75, and therefore the views do not represent those in all districts.

(3) At the time the survey was conducted, the government had not yet released the Truth and Reconciliation Draft Bill, made public at the end of July 2007. The focus-group discussions were conducted after the publication of the draft bill.

(4) Although attempts were made to be as inclusive as possible (see details of selection procedure in the methodology), it must be acknowledged that of the 32 people selected to conduct the interviews, a majority belonged to “upper castes.”

(5) The highest number of respondents belonged to the Brahmin, Chettri, and Newar groups. This may mean that not all the conflict victims of different origins were taken into account. It may reflect the fact that the “upper castes” have greater access to the state and nongovernmental organizations, and therefore are more likely to appear in organized databases.

“Killings, disappearances, rape.... A shopkeeper can’t do his business properly. A traveler is stranded midway. A farmer couldn’t till his land; a manual laborer couldn’t find daily subsistence. The rebels would storm into a house while people were about to have their dinner, take it from them, and people would have to go to sleep without eating anything. The next day the army would come and beat the members of the household for providing the Maoists with food. Sons and daughters who went to school never returned; a husband who went to till the land didn’t return. The grossest of the violations is the failure to make public the whereabouts of those who were disappeared or killed and the state’s failure to punish the perpetrators, who move about here and there without hindrance. The heart of the victims is afire with pain regarding the status of their loved ones—they are overwhelmed by material and mental pain. One of my neighbors, who had a son and a daughter, committed suicide, and the children are living with their old grandmother” –female participant, Bardiya Focus Group Discussion, September 2007.

“If they can kill my daughter and escape from justice by paying 25,000 rupees, I should also be allowed to kill the perpetrators who killed my 15-year-old daughter and pay 25,000” –Devi Sunwar, in the documentary, *Sari Soldiers*, Kathmandu, December 2007.

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NEPALI VOICES

Victims' perceptions of justice, truth, reparations, reconciliation, and the transition in Nepal

EXECUTIVE SUMMARY

Various transitional-justice mechanisms were included in Nepal's Comprehensive Peace Agreement (CPA), signed in November 2006. The International Center for Transitional Justice (ICTJ), together with Advocacy Forum (AF), decided to carry out a study on victims' perceptions of issues such as truth, justice, reparations, reconciliation, and the general transition in Nepal. This study seeks to contribute to the debate about the transitional process in Nepal, bringing to the discussion the perceptions and opinions of the people who were directly affected by violence during the conflict. The ICTJ and AF consider it important to bring the voice of the victims into a debate involving all sectors of society.

Since its inception in 2001, the ICTJ has worked in more than 30 countries, providing assistance to justice- and truth-seeking institutions, civil-society organizations, governments, and international organizations. Through its work, the ICTJ has found that transitional-justice mechanisms such as Truth and Reconciliation Commissions and Commissions of Inquiry can play a very important role in post-conflict societies. However, these processes need to be framed by a set of minimum standards in which broad consultations with victims are included, and international and domestic laws are respected (for example, by excluding reference to any amnesty for perpetrators of serious crimes). The environment needs to be secure as well as free from political interference, in order to ensure the objectivity of these bodies.

Similarly, Advocacy Forum has been advancing the debate and discussions on transitional justice and lobbying for comprehensive transitional-justice mechanisms in the country. AF has supported various initiatives to include victims' voices in the Nepali transitional process. This report is the result of a joint effort by the ICJT and AF to bring victims' voices to the forefront of the national debate.

The Comprehensive Peace Agreement included a commitment to carry out an inquiry on Disappearances, and also the creation of a Truth and Reconciliation Commission. These aims, although laudable, may seem overly ambitious within the current fragile political and security environment. It is important to ensure the establishment of these mechanisms, but it is equally necessary not to rush the process and jeopardize their independence and potential impact on the consolidation of democracy and peace.

Between June and October 2007, the ICTJ and AF conducted a survey of 811 victims from 17 selected regions in Nepal. This was followed by 10 focus-group discussions on issues related to the conflict and the possible implementation of a Truth and Reconciliation Commission. This is the first study of its kind in the country, so more research is needed.

The signing of the CPA officially brought an end to the 10-year conflict in Nepal. But human-rights abuses have been a constant part of Nepal's modern history and a significant cause of the conflict. The era of the "partyless" Panchayat system, imposed and backed by the monarchy, was marked by the

suppression of the democratic rights of the majority by a small political elite. Kathmandu-centered politics created resentment among many sectors of Nepali society.¹ Widespread opposition to the discriminatory political system led to the 1990 People's Movement, known as the *Jana Andolan*.

The democratic opening following the *Jana Andolan* did not go smoothly, and the monarchy and army retained considerable power. The mainstream parties in the early 1990s failed to live up to the high expectations of the population, as they wasted time and energy in power struggles that led to a series of ineffectual, often coalition, governments.

Although Maoists gained nine seats in the 1991 elections, realignments and programmatic evolutions led to the formation of the Communist Party of Nepal–Maoist (CPN–M), and in early February 1996 to the presentation of 40 demands to then-Prime Minister Sher Bahadur Deuba. Less than a fortnight later, on February 13, 1996, the “People's War” began.

From a situation of having almost nothing in terms of support or weapons, within a few years the Maoists had created an army able to launch hit-and-run attacks on district capitals. In September 2001, the full-time fighters were transformed into the People's Liberation Army (PLA), backed by a sizable militia. The Royal Nepal Army (RNA) was not deployed against the Maoists until the breakdown of the first peace talks, in late 2001, by which time the Nepal Police had suffered many setbacks and lost substantial quantities of arms to the Maoists.

The scale and intensity of human-rights abuses by both sides heightened after the breakdown of the peace talks in August 2003. It is widely accepted that the total number of fatalities during the conflict was somewhere around 13,000. Along with killings, torture, illegal detentions, abductions, use of child soldiers, and extortion, the conflict was characterized by widespread cases of disappearance.

On February 1, 2005, the king took over direct rule. By the end of the year, the mainstream parties and the Maoists had agreed on a joint platform that created the conditions for the popular uprising of April 2006, widely known as *Jana Andolan II*. The king's retreat and the reinstatement of Parliament, suspended since 2002, paved the way for a Maoist ceasefire and a third round of peace talks.

On November 21, 2006, the Seven Party Alliance (SPA) and the Maoists signed the CPA, a significant step forward that led to the Maoists' integration into the government in April 2007. Among the many issues covered by the CPA was the holding of elections by mid-June 2007 for a Constituent Assembly (CA) based on a mixed electoral system. The fate of the monarchy would then be decided at the first sitting of the CA, and the CPA also made a specific commitment to clarify the situation of the disappeared and set up a Truth and Reconciliation Commission (TRC).

While the CPA provides for the formation of mechanisms to address the past, there is a dearth of qualitative and quantitative data to inform the design and structure of these processes. It is critical that transitional-justice mechanisms involve stakeholders, especially victims and their families. This survey is an attempt to gauge the opinions and expectations of the victims and their families on a range of transitional-justice issues, such as human-rights violations, truth-seeking, accountability, reparations, and reconciliation. Insights from the study could inform policy and advocacy decisions on these issues.

¹ The Panchayat period refers to the political system that existed in Nepal from 1962 to 1990.

CONCLUSIONS AND POLICY RECOMMENDATIONS

Ensuring peace and justice in Nepal requires a comprehensive approach to transitional justice, rather than ad hoc interventions. The participants in this study believe that a commission should be established to determine the truth of what has happened and why, so that the horror will not be repeated in future; and that the whereabouts of those who have disappeared must be revealed. They clearly stated that they believe perpetrators should be tried in national courts for their crimes, and should not be given amnesty. The government should provide victims with reparations, and there is a great need for reform of the security sector and legal institutions. The respondents' experience with law enforcement agencies has been deplorable; accordingly, they have little confidence in the way these institutions currently operate. More detailed conclusions and recommendations are discussed in a separate section of the report.

Based on the conclusions and findings of the report, the following policy recommendations can be made.

To the Government of Nepal

- *Create an official joint task force on transitional justice* comprising representatives from the government, civil society, National Human Rights Commission, victims, and the UN.
- *Establish and publish a timeline for action on transitional-justice mechanisms*, including the Commission on Disappearances and Truth and Reconciliation Commission, to replace the schedule included in the CPA.
- *With the task force mentioned above, conduct broad-based national consultations on the Truth and Reconciliation Commission*, to gather stakeholders' views on the Commission's mandate, powers, goals, and timeframe. Such a Commission should not be established until victims are able to participate safely in its proceedings. The mandate should be broad and include the ability to examine the background, causes, and impacts of the conflict, as well as to identify institutions and individuals responsible for serious violations. A key requirement is a public process to appoint commissioners who are independent, impartial, and not motivated by political factors.
- *Establish a team to investigate and implement reforms of the currently dysfunctional system for dealing with complaints by victims of politically motivated crimes and violations.*
- *Ensure that prosecution of those suspected of involvement in serious crimes against Nepali law proceeds*, irrespective of their institutional positions or political affiliation.
- *Establish a team of legal experts to compile draft laws to deal with the recent history of mass violations*, which were not anticipated by current national laws.
- *Request assistance from international reparations experts* to draft a comprehensive system of victims' reparations to replace the current ad hoc compensation programs.

To Civil Society in Nepal

- *Increase coordination and collaboration* among local and international organizations working on transitional-justice issues in Nepal.
- *Conduct public education on transitional justice* that is not limited to the Truth and Reconciliation Commission but encourages a holistic approach to the past.

To the International Community

- *Increase offers of practical support and assistance* relevant to transitional justice to government and civil society.
- *Recognize that transitional justice issues are not short-term but long-term, essential building blocks of sustainable peace* that will be part of Nepal's future for many years to come, and therefore formulate programs of assistance and capacity-building accordingly.
- *Increase the level of coordination and cooperation* related to transitional-justice issues in Nepal.

I. Background

A. History of the Conflict

A full review of the background and course of the decade-long Maoist insurgency is beyond the scope of this chapter, which outlines the key historical events and political developments that led to the signing of the Comprehensive Peace Agreement (CPA) of November 2006. The CPA opened up the possibility of the new government backing the use of transitional-justice mechanisms in Nepal, notably through agreements to make public the status of the disappeared and to set up a “high-level Truth and Reconciliation Commission to investigate serious violations of human rights and crimes against humanity.”²

Since its unification by Gorkha conquest in the late eighteenth century, Nepal has been ruled by a succession of Shah kings. The monarchy was interrupted for 104 years, between 1846 and 1950, by the Rana family’s oligarchic rule through a series of all-powerful prime ministers. Until the end of the Rana period, Nepal was a closed country with hardly any foreign presence.

Since then, a constant struggle has gone on between multiparty democratic forces and the monarchy, linked closely to the Royal Nepal Army (RNA), which changed its name to the Nepal Army (NA) in 2006. The most important phase since 1950 was the period of the Panchayat system. Its overthrow, by the first People’s Movement (Jana Andolan) in 1990, ended this “partyless” political system but did little to eliminate the networks, habits, and structures of discrimination and exclusion that were essential to the regime’s survival. Nor did the post-1990 governments eliminate patronage and corruption. They continued the traditional obsession with Kathmandu-centered politics. Outside the Valley, only revenue collection and extraction of resources were worthy of attention.

During the three decades of the Panchayat system, the “official” Nepali identity was created. Its main elements were the monarchy (with the king seen as the reincarnation of the god Vishnu), the Hindu religion, and promotion of the Nepali language. Nepali had been privileged before that time as the only language used in the justice system, but its primacy and the complete exclusion of dozens of other languages spoken in the country became entrenched during the Panchayat period.

The democratic opening following the Jana Andolan did not go smoothly. The monarchy and the army retained considerable power, not least through Article 127 of the 1990 Constitution, which gave the king the power to “overcome difficulties.” This phrase was used to justify direct royal rule from February 1, 2005. The political parties in the early 1990s failed to live up to the high expectations of the population, as the mainstream parties bickered and wasted time and energy in power struggles that led to the rapid turnover of ineffectual coalition governments.

The Communist Party of Nepal (CPN) formed in 1949 and underwent a dizzying series of splits and realignments, some related to the Sino-Soviet rift, others over personal leadership disputes. Although Maoists gained nine seats in the 1991 elections, further realignments and programmatic changes led to the formation of the Communist Party of Nepal–Maoist (CPN–M). In early February 1996, the party presented 40 demands to then-Prime Minister Sher Bahadur Deuba. Although

² Article 5.2.5, Comprehensive Peace Agreement, November 2006.

many of the demands—notably the elimination of all forms of discrimination—could have won broad public support, the document threatened the launch of armed struggle if they were not met. Less than a fortnight later, the “People’s War” began on February 13, 1996.

Starting from almost nothing in terms of support or weapons, within a few years the Maoists created a credible fighting force that became a standing army able to launch hit-and-run attacks on district capitals. In September 2001 the full-time fighters became the People’s Liberation Army (PLA), backed by a sizable militia that did much to control the local population in areas where the state had been forced out. This militia was not mentioned in the CPA, a surprising and dangerous omission from the peace accord, given the force’s size and paramilitary nature.

The surprisingly rapid growth of the Maoist movement, particularly as a fighting force, is explicable only in relation to a large number of factors. One was the state’s absence from great swathes of the rural areas and the rural population’s unhappy relationship, if any at all, with the local administration and police. Both the police and the army came almost exclusively from the hills, and were led by upper-caste officials. The RNA did not deploy against the Maoists until the breakdown of the first peace talks, in late 2001, by which time the Nepal Police had not only taken quite a battering but had lost substantial quantities of arms to the Maoists.

The total number of victims of the 10-year conflict remains to be determined, but it is clear that conflict-related deaths and human-rights violations rapidly increased after the entry of the RNA. It is widely accepted that the total number of fatalities during the conflict was around 13,000. Some of these were deaths in battle rather than violations of human rights or humanitarian law. Nonetheless, in December 2002—soon after the declaration of a state of emergency, the subordination of the Armed Police Force and the Nepal Police to the army under the misnamed “Unified Command,” and the RNA’s entry into the conflict—Amnesty International reported:

The people of Nepal have experienced unprecedented levels of political violence. By the end of October 2002, according to figures made public by the Ministry of Home Affairs and the Royal Nepal Army, the number of people killed in the conflict since November 2001 had reached 4,366. This compares to around 2,700 people killed in the previous five years. According to the same sources, 4,050 of the 4,366 were “Maoists.”

Amnesty International believes that at least half of these killings may have been unlawful.³

The scale and intensity of human-rights abuses by both sides heightened after the breakdown of the peace talks in August 2003. The army in particular refined its use of torture and disappearance, as documented in the Office of the High Commissioner of Human Rights (OHCHR) report on the Maharajganj barracks in Kathmandu, published in 2006.⁴ Like all other cases of violations by the army, this incident has not been properly investigated and those responsible have not been prosecuted, despite the OHCHR report and unprecedented diplomatic pressure.

³ Amnesty International, *Nepal: A Deepening Human Rights Crisis*, Dec. 19, 2002, ASA 31/072/2002.

⁴ OHCHR, *Report of Investigation into Arbitrary Detention, Torture, and Disappearances at Maharajganj RNA Barracks, Kathmandu, in 2003–2004*, May 2006.

Along with killings, torture, rape, illegal detentions, abductions, use of child soldiers, and extortion, the conflict was characterized by widespread disappearances. In early 2008, the International Committee of the Red Cross (ICRC) confirmed that it had the names of nearly 1,150 disappeared individuals from the period of the conflict whose fate and whereabouts are unaccounted for. The ICRC also states that the total number of disappeared is probably much higher.

B. The Peace Process in Nepal

The king's assumption of direct rule on February 1, 2005, failed to gain either national or international support, as it became clear that it was deepening the crisis rather than resolving it, as the monarch had promised. By the end of the year, the mainstream parties and the Maoists had agreed to a joint platform that created the conditions for the popular uprising of April 2006, widely known as Jana Andolan II. The king's retreat and the reinstatement of Parliament, suspended since 2002, paved the way for a Maoist ceasefire and a third round of peace talks.

On November 21, 2006, the Seven Party Alliance (SPA) and the Maoists signed the CPA, a significant step forward that led to the Maoists' integration into government in April 2007. The CPA resolved many substantive issues, notably that elections would be held by mid-June 2007 for a CA based on a mixed electoral system, with 205 seats decided according to the first-past-the-post system and 204 by proportional representation. The fate of the monarchy was to be decided at the first sitting of the CA. The CPA also made a specific commitment to clarify the situation of the disappeared, and to set up a Truth and Reconciliation Commission (TRC).

The UN Security Council reacted on January 23, 2007, by passing Resolution 1740, setting up the United Nations Mission in Nepal (UNMIN), whose principal tasks were to monitor arms, armies, and ceasefire arrangements, and to offer technical support for free and fair elections.

Many obstacles remained, however. The Maoist war had unleashed more grievances than the CPA could resolve, and many among the ethnic minorities and "lower castes" felt that their contribution to the Jana Andolan II was inadequately reflected. In the case of the Madhesis, who make up about one-third of the total population, their dissatisfaction with the CPA led to their own Madhesi Andolan, which profoundly challenged the fundamental assumptions of the Nepali state. The failure of the SPA and the Maoists to construct a transparent, inclusive, and participatory peace process led to such mistrust that a significant proportion of Nepalis lost confidence that the CA process would adequately address their demands. This failure of confidence-building is a lesson to be drawn upon when the TRC process begins in earnest.

The CPA had other shortcomings, notably the lack of any details on plans for the RNA and the PLA, the two armies that had fought the civil war. Although the RNA remained in its barracks and the Maoist PLA grouped in agreed cantonment areas, no progress was made during 2007 on the demobilization of forces or on the restructuring of the security forces, which had bloated during the last five years of the conflict to twice their peacetime size. The fact that both armies remained intact and ready to return to conflict with little notice created a climate of distrust that at least partly contributed to political turbulence at the time of two election dates, in June and November (both of which were deemed unfeasible). The CPA's shortcomings are perhaps best illustrated by the

failure to keep the promise to make public the details of the disappeared “within 60 days,” which remained unfulfilled at the beginning of 2008.

In December 2007 the signatories to the CPA reiterated their commitment to the peace accord in a 23-point agreement. Moreover, CA elections were scheduled for April 10, 2008. It remains to be seen whether the unrest in the Terai and the lack of fruitful discussions with the Madhesi political leadership, combined with general lawlessness, will be conducive to free and fair elections by the third scheduled date.

The 23-point agreement did at least reiterate previous unfulfilled commitments, including those regarding the disappeared and a truth commission, which the parties committed to forming within one month of the December agreement. In early 2008 the commission still had not been established, and the lack of public consultation on the future TRC has been worrying.

C. Commissions of Inquiry

In Nepal, many commissions of inquiry have been appointed to investigate major human-rights violations and political violence.

Following the first Jana Andolan, under Sections 3 and 4 of the Inquiry Commission Act 1969, the interim government led by Prime Minister K. P. Bhattarai formed the three-member Malik Commission, headed by Janardhan Malik, in 1990. This was to investigate the loss of life and damage to property that had taken place during the People’s Movement from February 18 to April 8, 1990; investigate the loss of life and damage to property in Pokhara from February 12 to 17, 1990; establish the causes of and individuals responsible for the incidents mentioned above; and submit a report recommending action to be taken against those found responsible.⁵

The Malik Commission submitted its recommendations to the government and held various police personnel, local administrators, and members of the then-Council of Ministers responsible for suppressing the People’s Movement and for the human-rights violations committed at the time. The government never officially made the report public, and until now none of the recommendations of the Malik Commission has been implemented.

Another high-level inquiry commission was formed under the chairmanship of Krishna Jung Rayamajhi, to investigate human-rights violations that occurred during the second People’s Movement, Jana Andolan II, of April 2006. It was asked to name individuals directly or indirectly responsible for these violations. The commission began its work on May 10, 2006, and submitted its report to Prime Minister Girija Prasad Koirala on November 20, 2006. Only after continuous pressure from civil society did the government submit the report to Parliament on August 3, 2007; soon after it was made public.

The failure to implement the recommendations of past commissions meant a failure to uphold the rule of law or develop a culture of respect for human rights. Some of the reasons why these commissions have not been successful include lack of political will, the close connections of the principal actors in Kathmandu, political self-interest, and the weak response of civil society.

⁵ This was not listed separately in the mandate. However, the Pokhara incidents were investigated separately by the same commission and appeared as Part B of its report.

Furthermore, the Inquiry Commissions Act does not comply with international standards on investigations of human-rights violations.

D. Survey Responses

The following are the significant characteristics of the sample group that participated in the survey. A more complete description is in Annex 1.

A total of 811 surveys were conducted during the data-collection process. The majority of the responses originated from Banke (15 percent) and Bardiya (22 percent). These two districts report the highest incidence of forced disappearance in the country.⁶ Of the total number of respondents to the survey, 57 percent were males and 43 percent females.

The majority of respondents were married (76 percent), and 16 percent described themselves as widows or widowers. Almost half of respondents (49 percent) had never received any education, while 17 percent acknowledged knowing how to read and write. More than two-thirds (68 percent) of respondents are farmers, followed by 8 percent businessmen/women, generally involved in small-scale trade activities. Thirty-nine percent of respondents identified themselves as members of the Brahmin, Chettri, or Thakuri castes; 22 percent said they belonged to the Tharu ethnic group. Most respondents considered themselves to be Hindus (92 percent).

The main news source for the majority of respondents is radio (65 percent), followed by family and friends (10 percent), television (7 percent), and newspapers (5 percent). When asked about their political affiliation, 25 percent of respondents identified themselves as members of a political party, but 75 percent declared no political affiliation. Of those affiliated with a political party, 49 percent were members of the Communist Party of Nepal–Maoist (CPN–M), 23 percent were members of the Nepali Congress (NC), 20 percent of the CPN Unified Marxist-Leninist, and 5 percent of the Rashtriya Prajatantra Party (RPP). The remaining 4 percent were in other parties, such as the Rashtriya Janshakti Party (RJP).

Almost 90 percent of respondents stated that they felt safe in their communities (54 percent “safe” and 36 percent “safe enough”); 11 percent still felt very unsafe. When asked what they were most fearful of, 35 percent of respondents said they did not have any reason or anything to be afraid of. On the other hand, 26 percent declared they feared the security forces, while 16 percent indicated they were afraid of the Maoists.

Compared to the period before the lifting of the state of emergency and subsequent CPA, the majority of respondents declared that they felt more secure (81 percent); but 9 percent felt no difference between the conflict period and the current situation, and 11 percent felt less secure than during the conflict. Two out of the three districts that felt least secure after the CPA, namely Morang and Kapilbastu, have experienced some turmoil since the signing of the agreement. Morang district witnessed major communal violence in early 2007. In general, almost two-thirds of respondents showed hope for the future, and 18 percent stated that they were very hopeful. However, 18 percent had no hope of improvement or positive change.

⁶ Information based on the National Human Rights Commission, the Informal Sector Service Center (INSEC), and Advocacy Forum databases.

II. Legacy of Human-Rights Violations in Nepal

A. Causes and Impact of the Conflict

A combination of responses from the focus-group discussions (FGD) and the survey provides the basis of this section. The causes of the conflict emerged from the focus-group discussions, and the survey questionnaire described the effects of the conflict.

Understanding the causes of the conflict is fundamental to any assessment of victims' attitudes to truth, justice, reparations, and reconciliation. As such, at the beginning of each focus group, the participants were asked to identify them.

Responses ranged from class inequality to caste discrimination. Exclusion of the vast majority of the population from state institutions and structures, accompanied by discrimination based on caste, ethnicity, language, and region, were mentioned as factors that fuelled the conflict. Respondents also cited the state's inability to address the problems of historically marginalized groups and women over recent decades. It was widely felt that development had been uneven, with most Nepalis excluded. Finally, participants said the lack of democratization of state institutions and their failure to address these issues effectively had aggravated existing problems and provoked the conflict.

“The reason behind the conflict is the prevalence of discrimination between different classes, the haves and the have-nots, educated and illiterate, among various castes and creeds, religions, oppressors and oppressed, and male and female” –female participant, Women's FGD, Biratnagar, August 2007.

“Conflict happens whenever there is inequality of any kind—the disparity between haves and have-nots and between justice and injustice” –male participant, FGD Nepalgunj, October 2007.

“Where there is oppression, one party oppresses the other. There is feudalism. Poverty also tramples people underfoot. This leads to conflict. A state bound by traditional and parochial concepts prepares the ground for conflict. Conflict occurs to bring about changes” –male participant, Madeshi groups FGD, Janakpur, October 2007.

“The conflict is political” –male participant, IDP groups FGD, Kathmandu, August 2007.

“Since Nepal became a political entity, the central foundations and power elites of the country started oppressing the masses, leading to a class conflict” –female participant, Dalit groups FGD, Baglung, August 2007.

“The conflict started because of the state. The government hadn't paid attention to the demands of the people and civil society. The state didn't notice what was happening inside the country” –female participant, Women's FGD, Biratnagar, August 2007.

Structural inequality and caste discrimination were cited as the primary reasons for the conflict. Social problems such as “untouchability” and entrenched caste inequality were universally identified as major causes.

1. Why Victims Were Targeted

Beyond outlining the general causes of the conflict, respondents detailed the specific reasons why they or their family members were targeted.

More than half the respondents (53 percent) stated that they or their family members were targeted because they were suspected of being Maoist supporters. Just over 8 percent cited political reasons for human-rights abuses against them. Almost 13 percent of respondents perceived personal enmity as a cause. A few respondents (2 percent) stated that they were suspected of spying for the security forces. Other reasons included being a member of the police or army (2 percent), involvement in the People's Movement (1 percent), being rich and privileged (1 percent), and being a government employee (less than 1 percent).

2. Impact of the Conflict

When asked about the impact of the armed conflict on their village, almost half of the respondents (45 percent) said that it had created an environment of fear. Significantly, 11 percent stated that the war had led to an increase in serious crimes; 6 percent said the conflict had led to human-rights abuses by both sides, and 9 percent said the armed conflict had caused displacement from their village. Other impacts of the conflict included the obstruction of socioeconomic development (4 percent), loss of income (2 percent), lack of access to education (3 percent), destruction of physical infrastructure (2 percent), psychological problems (1 percent), distrust within society (0.5 percent), and confiscation of property (almost 1 percent). Only 4 percent felt there had been no impact at all on their village.

TABLE 1. IMPACT OF ARMED CONFLICT AT VILLAGE LEVEL

IMPACT OF CONFLICT: VILLAGE LEVEL	Frequency	Percent
Environment of fear	461	45.1
Serious crimes	115	11.2
Displacement	89	8.7
Abuses by armed forces (both sides)	62	6.1
Obstruction of economic & social development	45	4.4
No impact	39	3.7
Lack of access to education	26	2.5
Loss of income and other economic problems	25	2.4
Destruction of physical infrastructure	22	2.2
Psychological problems	11	1.1
Confiscation of property	7	0.7
Distrust	5	0.5
Forced recruitment	4	0.4
Others	46	4.5
Don't know [DK]	66	6.5
Total	1,023	100.00

Note: Respondents could provide more than one response. Percentages and totals are based on number of responses.

“Besides its direct effects, the conflict has brought in its wake psychosocial effects. The families, the victim themselves, relatives, and neighbors—all are tortured psychologically. Before the conflict we used to walk here and there without any fear and intimidation” –female participant, women’s FGD, Biratnagar, August 2007.

During the armed conflict, the impact on families was slightly different from the impact on the village. The highest number of respondents (41 percent) considered that it had caused psychological problems in the family. In addition, almost 4 percent believed that it had led to physical and medical problems. Nearly 28 percent felt that a direct outcome of the armed conflict was increased poverty. Seven percent believed the conflict had led to lack of education in their families, 6 percent thought it had created fear and distrust among family members, and 1 percent said it had caused conflicts within the family.

TABLE 2. IMPACT OF CONFLICT AT FAMILY LEVEL

Impact of conflict: Family level	Frequency	Percent
Psychological problems	294	40.7
Poverty	201	27.8
Lack of education	52	7.2
Fear and distrust	45	6.2
Physical and medical problems	26	3.6
Others	25	3.5
No impact	21	2.9
Forced labor	16	2.2
Conflicts in the family	8	1.1
Confiscation/destruction of property	5	0.7
No opinion/don't know (NO/DK)	29	4.1
Total	722	100.00

Note: Respondents could provide more than one response. Percentages and totals are based on number of responses.

B. Nature and Demographics of Human-Rights Violations

The survey responses of 811 participants included reports of 1,271 cases of human-rights violations. The number of individuals in a single family who had suffered a violation ranged from one to eight, with the average being between two and three.

The survey did not gather information on the number of violations suffered by each family member during the duration of the conflict, but instead focused on identifying the most important violation as each family member perceived it.

The most common type of violation reported was torture (51 percent), followed by disappearance (23 percent), and extrajudicial killing (20 percent). The percentage of rape cases was a little over 1 percent, while other types of violations totaled 4 percent. The low reporting of rape cases may be because of the social stigma attached to victims of sexual violence and rape.

Most of the reported violations in the survey (60 percent) took place between 2000 and 2003. The highest number of reported violations (23 percent) was recorded in 2002. Between 2004 and 2006, the percentage of human-rights violations was 35 percent.

Most victims surveyed were male (78 percent); female victims account for 22 percent of the total. Many victims (27 percent) were young people between 18 and 24. More than 23 percent were adults between 30 and 40. About 14 percent of the victims were under 18. Among these, the survey found 29 cases of victims 1 to 10 years old, generally bystanders or children caught in attacks that were

targeting their parents. Reported cases of extrajudicial killing, disappearance, illegal detention, and torture affected primarily males, while reported cases of rape (15) affected only women.

It is important to recognize that surveys might not be the best methodological tool to gather information about gender-based violence. In many societies, sexual violence in general and rape in particular are very sensitive topics, with victims subject to stigmatization. Gender-sensitive approaches would be necessary to gather accurate information on gender-based violence.

Even though the survey found that males were the main victims of human-rights violations, women significantly felt the consequences of these violations within families and communities (see Chapter V).

Most victims (69 percent) were married; 28 percent were single, and 3 percent were divorced, separated, widows, or widowers. A total of 46 percent of the victims were farmers, while 19 percent were students, 8 percent were businessmen/women, and 6 percent were professionals.

Almost a quarter of the victims had received secondary education or had reached School Leaving Certificate level or above. More than 13 percent had completed primary-level studies. A large group of victims were illiterate (24 percent), but 16 percent had some level of education and could at least read and write.

1. Profile of Perpetrators

The main perpetrators of human-rights violations as reported in the survey were state agents (of the army, 54 percent and police, 23 percent). The Maoists accounted for 17 percent of violations surveyed; 4 percent of the violations were attributed to unidentified groups, and less than 2 percent to other groups. According to some civil-society organizations working with victims and victims' groups, many victims became willing to talk about the violations committed by the security forces only after the state of emergency ended. A possible explanation for this attitude is the deployment of these groups outside the communities in which they had committed human-rights violations. The same does not apply to the Maoist cadres, most of whom are still living near their former victims and their families, creating a climate in which victims are not ready to talk about or denounce violations committed by the cadres. To some extent, this could explain the higher reported incidence of human-rights violations committed by security forces. Broader documentation of human-rights violations will be necessary to ascertain the responsibilities of each group during the conflict.

C. Perceptions of Human Rights, Justice, Peace, and Reconciliation

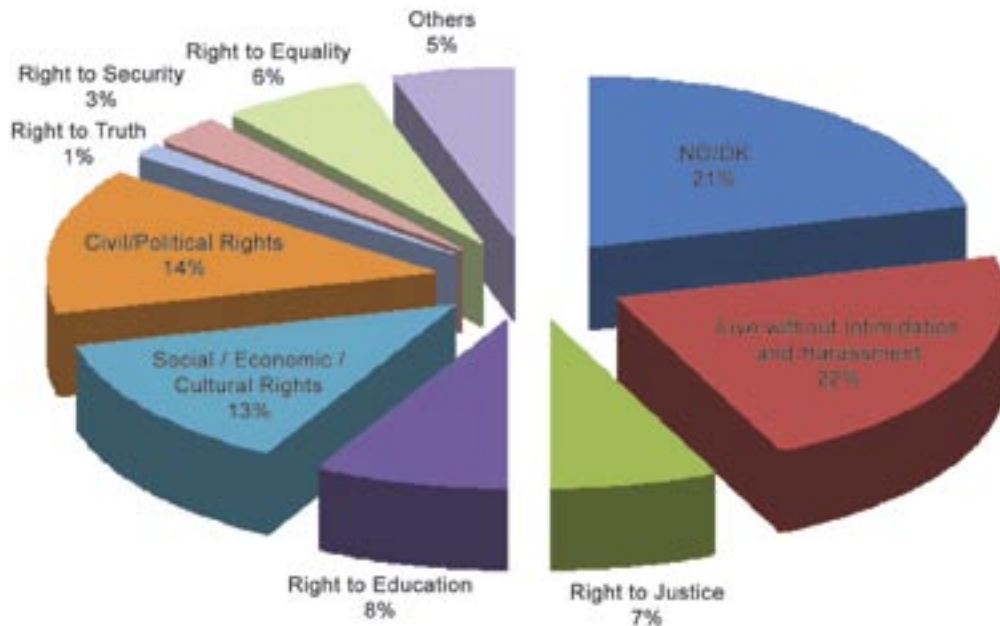
Human rights, peace, justice, and reconciliation form the cornerstones of transitional justice. Clarifying the meaning of these key concepts leads to a nuanced understanding of the issues underlying the survey. Respondents could provide more than one answer for each of these questions.

1. Human Rights

Respondents defined human rights primarily as the right to live without intimidation and fear (22 percent); civil and political rights, such as the right to life, freedom of speech and expression, and

freedom of movement (14 percent); and socioeconomic rights, such as food, shelter, clothing, and employment (13 percent). About a fifth of respondents could not define the term. Among female respondents, “don’t know” formed the single largest category of responses.

Figure 1. What Are Human Rights?



A significant number of males (132) and females (65) defined human rights as the right to live without intimidation. Similarly, both male (75) and female (48) respondents stressed basic socioeconomic rights such as food, shelter, clothing, and employment in their responses.

Almost one-third of respondents perceived human-rights violations as consisting of serious crimes such as disappearance, torture, extrajudicial killing, and rape. Explanations of what constituted human-rights abuses included harassment and intimidation (10 percent), violation of basic human rights (6 percent), prohibition of the rights of assembly and freedom of speech (5 percent), recruitment of child soldiers (1 percent), and lack of justice (0.5 percent).

Descriptions of human-rights violations during the focus-group discussions generally reinforced the survey results. Additional categories mentioned in the discussions were abductions, arbitrary arrests, incommunicado detention, sexual violence, displacement, looting, and burning of property.⁷

“I have been an eyewitness of an incident whereby a lady named X, while she was sleeping inside her house, was taken by army personnel. They took her to a small waiting room at Mathbar intersection in Chauraha and raped and killed her. The next day, the radio announced that she was killed in crossfire at Mathbar” –female participant, FGD, Bardiya, October 2007.

⁷ In general, “incommunicado” means the detention of an individual without access to the outside world, including family, friends, and legal counsel.

“During 1997–1998 about four to five policemen were killed when a police patrol mobilized to contain the Maoists was ambushed. The government sent a helicopter full of army and police personnel who burnt down several houses and lined up and killed innocent people” –male participant, Dalit FGD, Baglung, August 2007.

“A school is considered a zone of peace, but they turned it into a battleground. Instead of imparting education, they tried to fill the minds of the minors with the techniques to make bombs and use guns” –former male child soldier, Child Soldiers FGD, Surkhet, September 2007.

“Many international treaties to which Nepal is a signatory have been violated” –female participant, Madhesi FGD, Janakpur, October 2007.

“On the one hand, Maoists harassed us; and on the other, the army pestered us. If we attended the Maoists’ programs or let them sleep in our houses under pressure, the army personnel would come the next day and question us as to why we attended their programs and let them stay at night” –former female child soldier, Child Soldiers FGD, Surkhet, September 2007.

“There have been a lot of incidents of human-rights violations, ranging from minor to gross. Generally, we were beaten on the charge of being either a spy or a Maoist. In our district, Bardiya, alone, around 209 people were disappeared. Killing people while they were asleep in their houses or while they were having dinner—we experienced such heinous crimes during the conflict. All the rights, including right to live and right to free movement, etc., were violated” –male participant, Disappearances FGD, Bardiya, September 2007.

The following remark, by a woman who lost her husband in the conflict, captures the difficulty in defining human suffering:

“My husband was killed after he was taken from his bed blindfolded. Please tell me, what type of incident is that? Is it an encounter?” –female participant, Women’s FGD, Biratnagar, August 2007.

Violations of socioeconomic rights, including lack of basic services (2 percent) and obstruction of social development (1 percent), elicited fewer responses. Also, almost one-third of respondents could not define human-rights violations at all, even more than the 21 percent who were unable to define human rights. Although the survey responses leaned heavily toward violations of the right to life, many at the focus-group discussions considered caste discrimination to be a major human-rights violation. They also considered burning of houses by the army and police, as well as the Maoists’ practice of forcibly seeking shelter and food in civilian houses, as human-rights violations.

“During the conflict, our [Tharu community] social, economic, and political rights have been restricted” –male participant, Disappearances FGD, Bardiya, September 2007.

2. Justice

When asked what “justice” meant, many respondents (24 percent) equated it with the ability of individuals to gain access to justice; others mentioned prosecution, compensation, and fulfillment

of the demands of victims. Since respondents consisted mostly of victims and their families, their stress on access to justice may reflect the challenges they faced when presenting their stories of violations to state authorities or institutions. Respondents from the Dalit community either did not know what justice meant (24 percent) or associated it with gaining access to justice (21 percent). Although it is difficult to generalize on the basis of the sample size, the data may reflect the community's historical exclusion from the formal processes of justice. This was an open-ended question, and during data entry the responses were recorded in relevant categories.

Although 24 percent of respondents were unable to define the meaning of justice, 12 percent understood it as prosecution of perpetrators of human-rights violations. The high percentage of those who did not know what justice meant may reflect the lack of functioning mechanisms to deliver justice. In addition, the understanding of justice was linked to victims' rights, such as compensation (8 percent), fulfillment of the demand of the victims (7 percent), establishing the truth about human-rights violations (6 percent), and equality (6 percent).

TABLE 3. IN YOUR OPINION, WHAT IS JUSTICE?

What Is Justice?	Frequency	Percent
Access to justice	170	24
Prosecution of perpetrator	87	12
Compensation	57	8
Fulfillment of victims' demands	46	7
Investigate/find out truth about incidents of abuse	41	6
Equality	39	6
Victim support/basic needs	25	4
Others	22	3
No human-rights violations/abuses	11	2
No conflict/peace/no fighting	9	1
Confession of wrong doings by the perpetrators	8	1
Application of the law	6	1
To be safe/security	5	1
NO/DK	180	24
Total	706	100

Note: Respondents could provide more than one response. Percentages and totals are based on number of responses.

In the focus-group discussions the participants were not directly asked what justice meant to them, but some responses touched on possible ways to achieve practical justice.

“The victims and losses of those who experienced injustice because of the conflict should be established. Punishment is essential after investigating the discrimination. The killings by both the government and the Maoists should be investigated” –male participant, Dalit FGD, Baglung, August 2007.

3. Peace

Most respondents (60 percent) defined peace largely as the absence of conflict, and this result was consistent across ethnic and gender groups. Around 12 percent of respondents understood it to mean living and working without fear, threats, or coercion. Several (9 percent) described peace as living in harmony, and some (3 percent) equated peace with the right to life.

TABLE 4. IN YOUR OPINION, WHAT IS PEACE?

What is peace?	Freq.	Percent
No conflict	428	59.8
To be able to work without fear, threats or coercion	86	12.0
Harmony/harmonious coexistence	66	9.2
Right to life	19	2.7
Security	8	1.1
Reconciliation between the army and Maoists	6	0.8
Prosecute perpetrators & provide compensation to victims	6	0.8
Reconciliation	4	0.6
Justice	4	0.6
Support for victims' basic needs	4	0.6
Holding CA polls in an environment free of terror	3	0.4
Development	2	0.3
Others	29	4.6
NO/DK	51	7.1
Total	716	100.00

Note: Respondents could provide more than one response. Percentages and totals are based on number of responses.

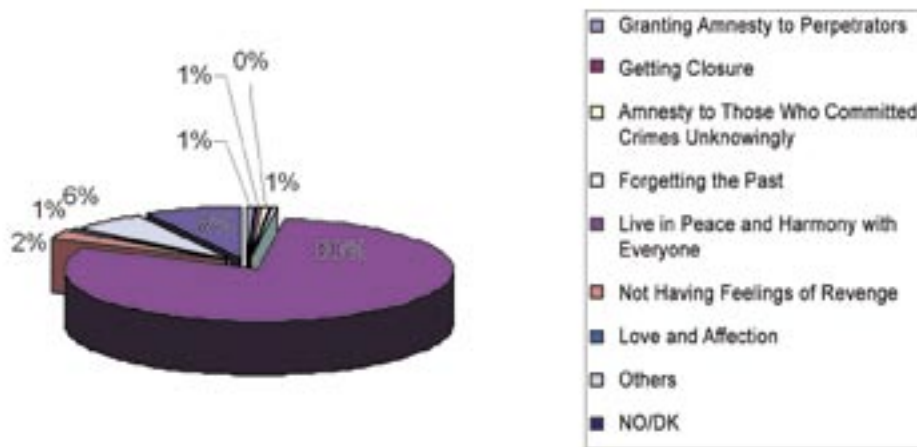
Less than 1 percent of respondents described peace as reconciliation between the army and the Maoists, prosecuting the perpetrators and providing compensation to the victims, justice, reconciliation, supporting victims' basic needs, or development, among others.

“Peace obtained through just setting doves free is not a genuine one” –male participant, Dalit FGD, Baglung, September 2007.

4. Reconciliation

A significant majority (80 percent) of the respondents defined reconciliation as living in peace and harmony with everyone. Only a very small number of respondents equated reconciliation with forgetting the past (0.6 percent) or granting amnesty to perpetrators (0.4 percent). Other responses included not having feelings of revenge, feeling love and affection, getting closure, and achieving amnesty for those who committed crimes unknowingly.

Figure 2. What Is Reconciliation?



III. Peace, Truth, and Justice

A. Peace, the CA, and the CPA

On being asked what should be done to achieve sustainable peace in Nepal, 27 percent of respondents said that promoting coexistence and reconciliation would strengthen peace. Almost 10 percent suggested coexisting peacefully and living in harmony. According to 7 percent, an end to the conflict would help to bring sustainable peace to the country. Holding the CA elections would assist in institutionalizing peace, according to 4 percent of respondents. About 4 percent thought the political parties should stop fighting for power to help achieve sustainable peace.

TABLE 5. IN YOUR OPINION, WHAT SHOULD BE DONE TO ACHIEVE SUSTAINABLE PEACE?

What should be done to achieve sustainable peace?	Frequency	Percent
Promote coexistence and reconciliation	212	26.8
Promote harmony	78	9.8
End conflict/no conflict/no fighting	58	7.3
Political party should stop fighting/greed for power	35	4.4
Hold CA polls	33	4.2
Provide reparations for victims	32	4.0
Prosecute perpetrators and abusive officials	28	3.5
Strengthen/change laws	21	2.7
Improve justice	18	2.3
End monarchy	15	1.9
Make people sovereign	13	1.6
Put an end to corruption	12	1.5
Promote equality	11	1.4
Stop violent politics	8	1.0
Improve security	8	1.0
Mobilize natural resources	4	0.5
Recognize the status of victims	3	0.4
Others	62	7.9
NO/DK	141	17.8
Total	792	100.00

Note: Respondents could provide more than one response. Percentages and totals are based on number of responses.

Some participants stated that the current political leadership was guilty of committing human-rights violations. Several participants in the focus groups were skeptical about the peace process, since the signatories themselves were violators.

“They forcibly displaced us just to gain political leverage. They are the ones who confiscated the property of the people who resisted their policies and practices. They have now become signatories of a host of agreements and deals, including the 12-point memorandum of understanding” –male participant, IDPs FGD, Kathmandu, October 2007.

Nonetheless the respondents stated that peace must be maintained at all costs.

“Peace should prevail so that we can go back to our homes, our children can get proper educations, and those injured might get proper medical attention” –female participant, IDPs FGD, Kathmandu, October 2007.

Significantly, 71 percent of respondents had either heard or read about the CPA. About 25 percent of respondents had not heard or read about it. However, disaggregating the percentages by degree of knowledge within the district, we can see that in Dhanusa 53 percent of respondents had heard about the CPA, while the number was even lower for the districts of Banke (46 percent) and Rukum (41 percent). More than 95 percent had heard about the CPA in the districts of Surkhet, Ramechhap, and Morang.

TABLE 6. KNOWLEDGE OF THE COMPREHENSIVE PEACE AGREEMENT WITHIN EACH DISTRICT

Have you heard/read about the Comprehensive Peace Agreement between the government and Maoists signed in November 2006?								
District	Yes		No		Don't Know		Total	
	Freq.	%	Freq.	%	Freq.	%	Freq.	Total %
Baglung	21	70	9	30	0	0	30	100
Banke	55	46	57	47	8	7	120	100
Bardiya	139	79	37	21	0	0	176	100
Dhading	18	82	4	18	0	0	22	100
Dhanusha	20	53	8	21	10	26	38	100
Kanchanpur	29	63	15	33	2	4	46	100
Kapilbastu	32	64	18	36	0	0	50	100
Kaski	39	74	10	19	4	7	53	100
Kathmandu	5	83	1	17	0	0	6	100
Kavrepalanchowk	6	100	0	0	0	0	6	100
Morang	55	90	5	8	1	2	61	100
Ramechhap	37	97	0	0	1	3	38	100
Rolpa	20	73	7	26	0	0	27	99
Rukum	7	41	10	59	0	0	17	100
Rupandehi	10	59	5	29	2	12	17	100
Surkhet	48	98	1	2	0	0	49	100
Udayapur	36	67	15	28	3	5	54	100
Total	577	71	202	25	31	4	810	100

Only 4 percent of victims believed the parties had adhered to the peace agreement to a large extent. Almost half of respondents thought that the parties had adhered to the peace agreement to some extent. Just over a quarter did not think that the parties had followed the commitments enshrined in the CPA at all. In addition, 23 percent did not comment on the question.

1. Constituent Assembly

A larger number of respondents (82 percent) had heard about the CA elections. Only 18 percent of respondents had not heard about them.

Many (40 percent) supported nominating impartial individuals for the CA elections. A few respondents deemed those individuals who could introduce and implement development programs fit to stand for election (7 percent), or those who were victims themselves or would support victims (8 percent). Around 2 percent believed that individuals who could guarantee human rights for all should be candidates. Around 6 percent deemed good education an important qualification. However, when asked more specifically whether or not individuals involved in human-rights violations should be allowed to stand in the CA elections, the overwhelming majority (90 percent) said no. Only 9 percent of respondents stated that those involved in human-rights violations should be permitted to stand for the CA.

2. Constitution

More than half of respondents said that they did not know what provisions should be included in the Constitution to allow for an independent and fair justice system in the future. This indicates ignorance about core constitutional principles and the rights of citizens. Based on these figures, it can be assumed that the campaign to spread awareness about the CA elections had been only partially successful in informing the people about their meaning. A few respondents recommended inserting the following clauses into the Constitution: the establishment of justice institutions at the local village level (4 percent); a law to punish perpetrators (3 percent); laws regarding human rights (2 percent); proportional representation (2 percent); promises to pay compensation to victims (1 percent); empowerment of courts and transparency (1 percent); affirmative action for Dalits (1 percent); and laws in line with international standards (1 percent).

3. District Peace Committees

A significant majority of respondents (81 percent) had neither read nor heard about the district peace committees. Only 13 percent were aware of their existence. Similarly, less than a quarter of the respondents had either read or heard about the announcement, by the Ministry of Peace and Reconstruction, that victims should report their cases to the Chief District Officer (CDO).⁸ About 75 percent were unaware that victims had to register their cases with the CDO. This indicates that merely appointing the CDO to receive reports of human-rights abuses is insufficient. Reaching out to victims through existing governmental and nongovernmental organizations and informing them about the procedures are equally important. Simply forming district peace committees or appointing focal persons would be futile.

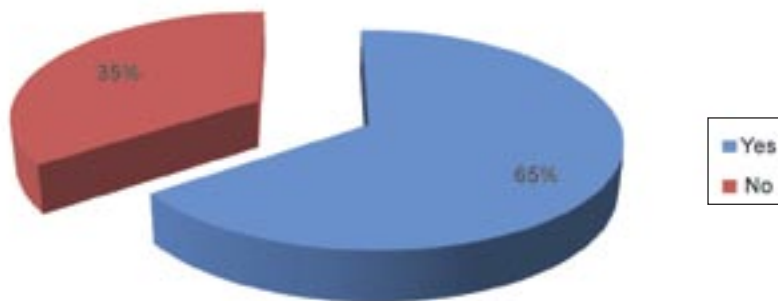
⁸ The Chief District Officer is the main administrative officer in a district.

B. Truth-seeking Mechanisms

The Comprehensive Peace Agreement provides for the formation of a Truth and Reconciliation Commission (TRC). Attention has recently focused on this, and so it was essential to solicit from the relevant stakeholders, especially victims, their expectations of such a commission.

Across the regions, castes, and ethnic groups, consensus existed on the need to investigate human-rights abuses, and to create an accurate historical record of the conflict. Many respondents saw establishing the truth as the first step in addressing human-rights violations that took place during the conflict. Asked whether they had heard about the TRC, 65 percent of respondents answered in the affirmative, and 35 percent stated they had not. Fewer women had heard about the TRC, with only 24 percent of all the women respondents saying they had heard about it, compared with 40 percent of male respondents.

Figure 3. Have You Heard about the Truth and Reconciliation Commission?



Analyzing the different educational levels of the respondents makes it clear that awareness of the TRC is directly proportional to educational status. People in the higher educational cluster are more likely to know about the TRC than are those who are illiterate or less educated. For instance, a sizable number of respondents (84 percent) among those who had received education post-School Leaving Certificate (SLC) had heard about the TRC. In contrast, only 58 percent of the illiterate respondents had heard about it.

TABLE 7. KNOWLEDGE OF THE TRUTH AND RECONCILIATION COMMISSION BY EDUCATIONAL LEVEL

Have you ever heard about the Truth and Reconciliation Commission?						
Educational Level	Yes		No		Total	
	Frequency	%	Frequency	%	Frequency	%
Illiterate	223	58	162	42	385	100
Read/Write	92	66	47	34	139	100
Primary Level	38	70	16	30	54	100
Secondary Level	85	69	38	31	123	100
Above SLC	81	84	15	16	96	100
Total	519	65	278	35	797	100

Respondents who had heard about the TRC were asked to comment specifically on its objectives and mandate.

1. Composition and Mandate of a Truth Commission

Respondents indicated that the primary goal of such a body should be to

- Find out the truth about the past (19 percent);
- Provide justice to the victims (19 percent);
- Provide compensation to the victims and their families (16 percent);
- Prosecute persons responsible for human-rights violations (8 percent);
- Establish the status of the disappeared (4 percent).

When asked about the primary goals of a TRC in Nepal, few believed that it would end the culture of impunity (0.3 percent), bring equality (0.2 percent), or end the killings and violence (0.2 percent). Given the failure of previous commissions of inquiry in the country, there was consensus that to be a credible and effective body, a truth commission must be designed differently from earlier ones.

“The commissions that were formed in the past have all been controversial from their inception to their dissolution. The reports of these commissions were either full of errors or not implemented. By now we have become pessimistic about the concept of commissions” –female participant, Women’s FGD, Biratnagar, August 2007.

In general, respondents agreed on the core objectives of such a commission. They said that it should attend to the needs of the victims and ensure their adequate participation in the process. They also emphasized that the process should be inclusive, and must pay attention to the condition of the victims and other vulnerable groups, especially women and children.

“The commission should champion the cause of the victims” –male participant, Janajatis FGD, Pokhara, August 2007.

“The main aim of the commission should be to increase the access of the victims to the commission and then to justice” –female participant, Women’s FGD, Biratnagar, August 2007.

“The primary aim of the commission should be to emancipate children who are either underground or still with the Maoist military” –former male child soldier, Child Soldiers FGD, Surkhet, September 2007.

Several focus-group participants saw providing justice as one of the commission’s primary objectives. There was widespread support for investigating and prosecuting serious crimes and human-rights violations.

“The past is past and those dead are never going to return—that’s why the commission should address the problems of the victims’ families. The women would be relieved when they heard that the perpetrators who killed their husbands were strictly punished. If the government had punished the criminals, then they would not even have expected compensation” –female participant, Women’s FGD, Biratnagar, August 2007.

“The Truth Commission’s attention should be focused on punishing perpetrators involved in crimes like homicide, physical abuse, violence, rape, etc.” –female participant, FGD Kathmandu, October 2007.

2. Mandate of the TRC

In addition to the main objectives, respondents were asked what they would expect a truth commission to look into. Responses included:

- Inquiring into and revealing the truth about past human-rights violations (27 percent);
- Making known the whereabouts of the disappeared (7 percent);
- Investigating past atrocities (7 percent);
- Separating the guilty from the innocent (4 percent);
- Studying the culture of impunity in Nepal (0.2 percent);
- Removing corrupt and abusive officials (0.2 percent).

Almost half of respondents chose the categories “others” (29 percent) and “don’t know” (15 percent). A possible explanation for this is that, even if respondents have heard about the TRC, they were unfamiliar with its potential functions and powers. It can be concluded that the government must make a serious effort to inform and consult widely with stakeholders on the formation of a truth commission.

In the focus groups, the participants reiterated the objectives of a truth commission that were mentioned in the survey. Most participants called for publicly establishing and acknowledging the whereabouts of the disappeared and guaranteeing nonrepetition.

“To make a new Nepal, discourage the recurrence of human-rights violations, and the status of the disappeared persons must be made public” –male participant, Disappearances FGD, Bardiya, September 2007.

“We should form a commission that would prevent the repetition of these incidents in the future. The perpetrators should be strictly punished” –female participant, Disappearances FGD, Bardiya, September 2007.

“The status of those disappeared must be made public; it should be clarified whether they are dead or alive. Because of this dilemma we have not been able to carry out the last rites of our family members” –female participant, Disappearances FGD, Bardiya, September 2007.

According to the focus-group participants, the truth commission should probe a wide range of crimes, such as torture, disappearance, recruitment of child soldiers, rape, abduction, extrajudicial killing, displacement, burning, and looting. In addition, several participants wanted the commission to conduct comprehensive investigations that would identify the perpetrators as well as institutions responsible for human-rights violations.

“The crimes should be probed; the range of crimes committed by the perpetrator should be inquired into; political and institutional links of the culprits should be identified” –female participant, Women’s FGD, Biratnagar, August 2007.

“The commission should investigate the cases of severe torture” –male participant, Madhesi groups FGD, Dhanusa, October 2007.

Expressing his expectations of the truth commission, a former child soldier said:

“The aim of the commission should be to find out what sort of incidents occurred during the conflict, who are the perpetrators, what types of punishment should be meted out to them, how to reintegrate the conflict victims into society, etc.” –male former child soldier, Child Soldiers FGD, Surkhet, September 2007.

Focus-group participants felt that the reasons for the conflict should be investigated. In the discussions with the Dalit community, participants emphasized the need to determine the enabling factors or causes of human-rights violations. Multiple responses during this particular focus group asked for the truth commission to bring to light the causes of the conflict. For instance, a male member of the Dalit community stated, “The elements that produced the conflict should be brought to light” (FGD, Baglung, September 2007).

Similarly, other respondents stated:

“The conflict in a society occurs because of contradictions. These should be studied and investigated” –male participant, Dalit FGD, Baglung, September 2007.

“The commission should find out the cause of the conflict” –female participant, Dalit FGD, Baglung, September 2007.

“It is essential to understand the reason why the conflict occurred” –male participant, Dalit FGD, Baglung, September 2007.

Responses indicated, that along with investigating physical violations and causes, the commission should inquire into the mental and social effects of the conflict. There was support for the Truth and Reconciliation Commission to assess the psychological impact of the conflict on the victims, their families, and the community.

“The physical and mental effect on the relatives of those who were killed, disappeared, those made homeless, and the children should be probed by the commission” –male former child soldier, Child Soldiers FGD, Surkhet, September 2007.

“It must also focus on the psychosocial effects of the conflict. The other issues are rehabilitation and reconciliation. The psychological aspect of all the incidents should be studied” –female participant, Women’s FGD, Biratnagar, August 2007.

“Reconciliation must be carried out when both the victims and the perpetrators have agreed to do so. The commission, unlike similar earlier commissions, should aim at delivering justice to the people” –female participant, Madhesi groups FGD, Janakpur, October 2007.

Overall, participants felt that the mandate of a TRC should be framed to allow it to examine the causes and effects of the conflict in order to establish the truth. They stressed that the TRC should examine the patterns of violations, who was responsible for them, and the impact they had on communities and families. Many said that it should not be modeled on the previous commissions of inquiry. It is interesting to note that no one suggested that the TRC should provide amnesty or actively promote reconciliation.

3. Appointment of the Commissioners

Also discussed in detail at the focus groups were the criteria for selection of commissioners of the TRC.

Many respondents said that commissioners should not be affiliated with any political party, and they placed great emphasis on commissioners’ independence and impartiality. Both male and female participants stressed maintaining gender balance within the commission. Historically, women have been marginalized in Nepal, and participants felt that unless specific provisions were made to appoint women commissioners, they would be overlooked by the authorities.

“An impartial and independent person who would perform his or her duty without any political favoritism should be appointed” –female participant, Disappearances FGD, Bardiya, September 2007.

“Independent-minded, uncontroversial figures representing all sectors of the society should be included” –female participant, Women’s FGD, Biratnagar, August 2007.

“As declared recently, the presence of 33 percent women is necessary” – female participant, Women’s FGD, Biratnagar, August 2007.

“The commission should be all-inclusive. Dalits and women should be included. They should have the knowledge of the law; have the capacity to impart proper justice” –female participant, Dalit FGD, Baglung, September 2007.

A Dalit woman in Baglung gave a powerful response that underlined the need for genuine consultation:

“It should include both men and women equally. It should be someone who is selected by the people. The process should be people-oriented and not center-oriented, and must include victims of the conflict, castes, ethnic groups, etc.” –female participant, Dalit FGD, Baglung, September 2007.

The following comment, by a person whose son disappeared a few years ago, summarizes the key issues involved in creating an effective truth-seeking body, including appointing its commissioners. It also suggests the disillusionment of Nepalis with their political leadership.

“It is very likely that the perpetrators themselves are going to spearhead the commission, and therefore there is no possibility of authentic truth-seeking by the commission. The TRC, therefore, should be an absolutely independent entity run by human-rights activists. The inclusion of political representatives in the commission should be discouraged. The commission should have the power to exert tremendous authority. It should include specialists, so that the corpses can be exhumed and analyzed” –male participant, Disappearances FGD, Bardiya, September 2007.

Several other respondents supported the suggestion that the selection of commissioners be public. In the spirit of making the process of selection transparent and inclusive, it was suggested that victim representatives, as well as those with a record of human-rights work, be considered for the position of commissioner. It was also proposed that the candidates be vetted for their human-rights record.

“Members of human-rights organizations, victims, and the leaders of civil society should be included” –male participant, Disappearances FGD, Bardiya, September 2007.

“There should be compulsory representation from the victims” –male participant, FGD Nepalgunj, October 2007.

“Unless the victims are represented in the commission, it will turn out to be like the Malik Commission or the Rayamajhi Commission. The same pattern of injustice will continue until the Truth and Reconciliation Commission includes victims as its members” –male participant, Disappearances FGD, Bardiya, September 2007.

Focus-group participants recommended that approximately one-third of the total commissioners represent the victims. Some respondents believed that, although education qualifications were

important, they should not be the sole criterion since this might preclude representation of traditionally marginalized groups or victims. Some respondents said that the commissioners should represent a variety of disciplines such as law, social sciences, and academia. Several believed that the commissioners should have a good understanding of the conflict.

C. Justice and Accountability

A set of questions solicited the respondents’ views besides their immediate needs and concepts of justice. An overwhelming majority of the respondents (90 percent) wanted trials and punishment for past human-rights violations. Only 6 percent did not want trials for abuses committed during the conflict.

Similarly, most respondents stated that it was very important (68 percent) or important (25 percent) to have accountability for past human-rights violations. This corroborates the finding that most respondents wanted trials and punishment for violations during the conflict. Only 1 percent said it was *not* important to have punishment for past abuses.

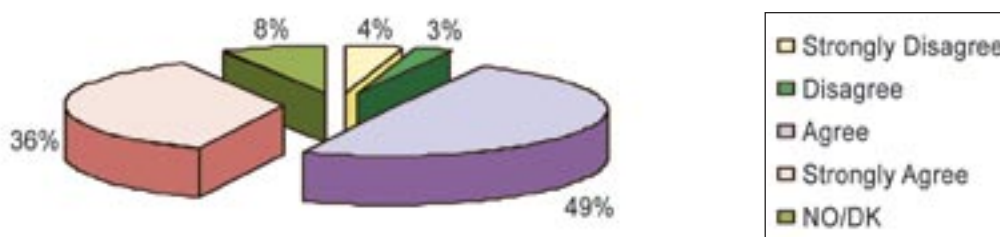
“Human-rights abusers of all kinds should be punished. All the personal assets either stolen or seized must be duly returned. Justice should be delivered in a peaceful and timely manner. There should not be any obstacle during the process in the courts”—female participant, IDPs FGD, Kathmandu, October 2007.

1. National or International Trials

A significant majority (69 percent) supported holding national trials, while 13 percent backed international trials. In the opinion of 1 percent of respondents, both national and international trials were options.

When asked for their views on where trials should take place, 36 percent strongly agreed and an additional 49 percent agreed that trials should be held in national courts. Only 5 percent strongly disagreed and 3 percent disagreed that perpetrators should be tried before national courts. One explanation for this could be that respondents were more familiar with national courts and not aware of the nature and scope of international mechanisms. Another explanation might be their desire to monitor any process of accountability for human-rights violations. This would be easier if the trials took place in national courts.

Figure 4. Agree or Disagree: Perpetrators Should Be Tried before National Courts



Many respondents strongly supported national trials but also recognized that the current laws might prove inadequate to ensuring effective prosecution. More than 40 percent agreed and 16 percent strongly agreed that current laws in Nepal were inadequate for trials for serious human rights violations; 18 percent disagreed, and 4 percent strongly disagreed.

TABLE 8. CURRENT LAWS ARE NOT ADEQUATE FOR TRIALS

Current laws are not adequate for trials	Frequency	Percent
Strongly disagree	28	4
Disagree	143	18
Agree	329	41
Strongly agree	131	16
NO/DK	176	21
Total	807	100

The option of criminal accountability was contrasted with the variables of compensation, peace, and reconciliation.

When asked to prioritize, 40 percent agreed that compensation was more important than trials, and another 14 percent strongly agreed. More than a quarter of respondents disagreed that compensation was more important than trials, and 14 percent strongly disagreed.

A majority of respondents disagreed that putting perpetrators on trial would endanger peace (38 percent disagreed and 13 percent strongly disagreed). However, a significant proportion took the opposite view, that trials would endanger peace (32 percent agreed and almost 4 percent strongly agreed).

TABLE 9. TRIALS WILL ENDANGER PEACE

Trials will endanger peace	Frequency	Percent
Strongly disagree	106	13
Disagree	307	38
Agree	255	32
Strongly agree	29	4
NO/DK	109	13
Total	806	100

Similarly, a slightly larger proportion of respondents disagreed with the proposition that trials would endanger reconciliation (33 percent disagreed and a further 12 percent strongly disagreed). On the other hand, 37 percent agreed and a further 4 percent strongly agreed.

Often, opponents of truth commissions argue that peace and justice are mutually exclusive, and that justice may even jeopardize a peace process. However, when asked if holding perpetrators

accountable in the near future would contribute to peace, 69 percent agreed; 16 percent disagreed, and 15 percent said they did not know. A comparable percentage (69 percent) agreed that holding perpetrators accountable in the near future would strengthen security, while 15 percent disagreed. Similarly, two-thirds of respondents agreed that holding perpetrators accountable in the near future would strengthen *loktantra* or democracy. Only 9 percent disagreed that accountability in the short term would strengthen democracy.

TABLE 10. AGREE / DISAGREE STATEMENTS

	Strongly Disagree		Disagree		Agree		Strongly Agree		NO/DK		Total	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Trials would jeopardize reconciliation	99	12	266	33	297	37	29	4	114	14	805	100
Trials should be held within two years	54	7	86	11	304	38	197	24	160	20	801	100
Trials should be held after two years	227	28	261	33	103	13	43	5	166	21	800	100

When asked about the period within which trials should be held, 38 percent agreed they should take place within two years, and 25 percent strongly agreed. More than 10 percent expressed disagreement, and 7 percent strongly disagreed.

Fewer respondents either agreed (13 percent) or strongly agreed (5 percent) that trials should be held after two years; 33 percent disagreed and 28 percent strongly disagreed. Aggregating the results showed that a higher percentage of respondents thought trials should be held within two years.

Nearly half of respondents did not say anything about the involvement of international actors. When asked whether the international community should help to ensure justice and accountability, respondents made no clear answers. Seven percent supported the idea of international involvement only if national laws were inadequate; 6 percent said a mixture of national and international personnel should lead the process, and 2 percent supported a UN-led process.

Respondents supported the proposition that justice also involved identifying the institutions that had failed, either by commission or omission, to prevent massive human-rights violations.

D. Formal Justice Mechanisms

The survey also explored respondents' experiences of the existing justice system during a complaint process, as well as their general perceptions of the justice system.

1. Filing Complaints

Respondents all had suffered violations, but 52 percent had filed complaints following the incidents and 46 percent had not. Those who filed complaints presented them to:

- Human-rights organizations (30 percent);
- Chief District Officer (16 percent);
- Police (12 percent);
- National Human Rights Commission (10 percent).

Respondents were asked what their main demands were. These fell into eight categories, with the majority related to the status of victims (35 percent) and compensation claims (21 percent). Ten percent also demanded the prosecution of perpetrators.

2. Responding to Complaints

Respondents typically filed complaints with one of 10 institutions: the courts, the CDO, the National Human Rights Commission, the police, human-rights organizations, the Nepal Bar Association, community leaders, community-based organizations, or political parties. They were also asked how each of the institutions responded to the complaint. The following percentages of respondents said that the different institutions had been helpful:

- Nepal Bar Association (94 percent);
- Human-rights organizations (87 percent);
- Community-based organizations (81 percent);
- National Human Rights Commission (80 percent);
- Community leaders (73 percent);
- CDO (36 percent);
- Courts (33 percent);
- Police (30 percent).

3. Failure of State Institutions to Provide Justice

The data showed that 63 percent of respondents who had filed complaints with police said that no action had been taken, they had been harassed, or their complaint had been refused and not registered. Sixty percent of respondents reported this also had happened when they complained to CDOs, and half had such experiences in the courts.

4. General Expectations

The survey asked about expected responses from the following seven institutions: CDOs, the police, the army, human-rights organizations, international nongovernmental organizations (INGOs), the media, and the community.

More than four-fifths felt the army would not be helpful and would ignore or obstruct their complaint. Eighty percent felt the same about the police. Responses also showed low expectations of CDOs, with 69 percent believing they would be not helpful and would ignore or obstruct complaints.

On the other hand, 61 percent of respondents expected that human-rights organizations would be helpful, and half believed that community organizations would help.

Many of those who had filed complaints had been assisted in doing so. Those who had helped were relatives and friends (26 percent) and human-rights activists (26 percent).

The survey asked those who did not file complaints about their reasons for making such a decision. The largest number (17 percent) said they feared the security forces (army and/or police), and 14 percent feared others, such as family members and/or political parties.

When respondents were asked whether they knew which institution provides or delivers justice, 29 percent had no opinion or did not know. The second highest response was human-rights organizations (23 percent), followed by courts (21 percent). The high percentage of responses demonstrating no knowledge of the existing mechanisms for access to justice may indicate the state's lack of presence in the different regions of the country. The recognition of human-rights organizations as institutions that "provide/deliver justice" may reflect their work in areas where the state is weak or absent.

When asked their opinion of which institutions *should* be involved in delivering justice, a quarter responded that they had no opinion or did not know. But by far the highest percentage of respondents, 37 percent, believed that human-rights organizations should be involved in delivering justice.

More than a third of respondents had been to court. Of these, 58 percent found the process and environment friendly, but only 39 percent felt that the process was easy to understand. Only 37 percent found the experience to be independent and fair and only 28 percent believed that the process was not corrupt. In all, almost three-quarters felt that the process was lengthy and tiring.

5. Expectations of Court Process

For those who had never been to court, the survey posed a series of questions to gauge their expectations of the court process. When asked whether they would expect the court's process and environment to be friendly to victims, only 49 percent replied yes; 31 percent expected it to be easy to understand; 19 percent felt that it would not be lengthy and tiring; and 40 percent expected it to be a good experience. Only 36 percent of respondents expected the process to be independent and fair; 37 percent believed they could find a good lawyer or representation if they went to court. A mere 9 percent felt they could afford a lawyer or representation.

E. Attitudes toward Amnesty and Forgiveness

Although 64 percent of respondents claimed to know the meaning of the term "amnesty," more than a third said they had never heard the term before.

Further probing the issue of amnesty, researchers asked additional questions of respondents who knew what amnesty meant. A large majority (77 percent) said that human-rights violators and perpetrators should not receive amnesty for their crimes. Other persons who should not be granted amnesty included security forces (7 percent), individuals who continue to pursue unlawful activities (2 percent), Maoists (2 percent), and corrupt officials (1 percent).

Responses of the focus groups clearly indicated that most participants did not favor a law providing blanket amnesty to perpetrators.

“Can we revive our husbands? Can our children get their father’s love? Is money the greatest thing? I feel that the method of punishment should be ‘life for life’” –female participant, Women’s FGD, Biratnagar, August 2007.

“The perpetrators should be punished. I don’t care about compensation and all; I want the commission to take stern action against those who killed my son” – male participant, Disappearances FGD, Bardiya, September 2007.

1. Serious and Less-serious Crimes

Almost 80 percent of respondents stated that a distinction should be made between those who had committed serious crimes and those who had perpetrated less-serious crimes. About 18 percent believed that no distinction should be made between the different levels of human-rights violations or crimes. More than two-thirds said the amnesty process should differentiate between individuals who had ordered a crime and those who had carried it out. On the other hand, 26 percent believed that no distinction should be made between these two categories.

There was very little support among respondents for allowing perpetrators to go free. The vast majority strongly disagreed (49 percent) or disagreed (37 percent) that they were ready to pardon the perpetrators. In contrast, only 2 percent strongly agreed and another 9 percent agreed that they were ready to pardon the perpetrators.

TABLE 11. I AM READY TO PARDON PERPETRATORS

I am ready to pardon perpetrators	Frequency	Percent
Strongly disagree	389	49
Disagree	297	37
Agree	73	9
Strongly agree	17	2
NO/DK	26	3
Total	802	100

It is notable that men and women equally supported criminal accountability.

“Accountability is what is sought by everyone. The commission should focus on this aspect” –female participant, Women’s FGD, Biratnagar, August 2007.

IV. Looking Forward: Needs, Reforms, and Reparations

A. Immediate Needs and Concerns

When asked about their immediate needs, respondents identified the following priorities:

- Compensation (24 percent);
- Education (17 percent);
- Basic needs, such as food, housing, and clothing (16 percent);
- Health and medical facilities (12 percent);
- Employment (8 percent);
- Publicizing the whereabouts of the disappeared (7 percent);
- Punishing perpetrators (3 percent);
- Formation of a republic (1 percent).

The majority of responses concerning immediate needs were related to basic requirements, such as health, education, housing, clothing, and employment, and less associated with wider issues such as the consolidation of peace. However, when victims were asked to identify future needs, perceptions changed significantly. Aside from compensation and education, respondents emphasized the need to achieve peace and security in the country.

Considering that the profile of most of the victims coincides with low levels of education in rural agrarian communities, it is unsurprising that their immediate concerns were related to the satisfaction of basic needs such as food, housing, health, and education. Projecting into the future in light of their experiences of conflict, respondents showed that they highly value stability and peace in their communities.

Figure 5. Immediate Needs

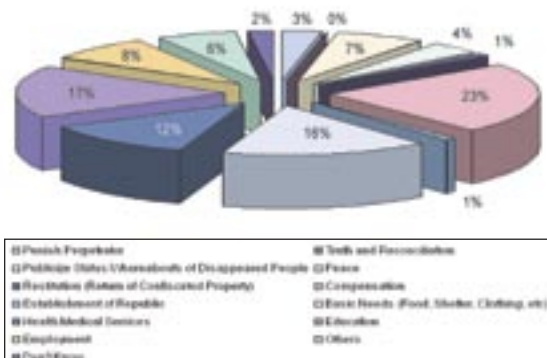
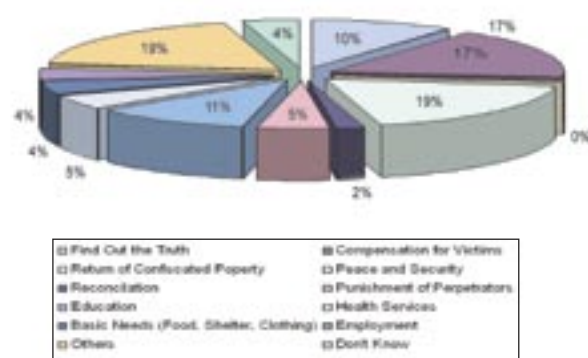


Figure 6. Future Needs



B. Institutional Reforms

When asked which government institutions should be reformed, 23 percent of respondents felt the security forces should be given high priority; 13.3 percent said all government organs needed reform; 12 percent prioritized the CDO, and 33 percent had no opinion or did not know.

With regard to reform of the Nepali police, 23 percent said the police should be more professional, and 11 percent felt more training was needed. Another 11 percent said anti-corruption measures

should be taken. Nine percent believed that the use of torture should be stopped. Only 2 percent of respondents felt that no reforms were necessary in the Nepali police. More than 12 percent had no opinion or did not know.

When asked what reforms should be initiated in the Nepali army, 21 percent said it should be more professional; 10 percent said the practice of torture should be eradicated. Only 3 percent felt that no reforms in the army were necessary. Eighteen percent had no opinion or did not know, and 12 percent chose “other.”

When asked what reforms were necessary for the judiciary, 21 percent said anti-corruption measures were needed. A significant number of respondents (15 percent) also believed reforms were needed to increase equal access to justice. A significant number (12 percent) felt reforms were necessary to increase victim awareness regarding rights. Almost a quarter of respondents had no opinion or did not know, and 7 percent chose “other.”

C. Trust in Institutions

The survey also attempted to gauge the level of trust people have in governmental and nongovernmental institutions in the country. Respondents were asked how much they trusted the army, the police, the courts, Parliament, the Maoists, political parties, NGOs and the UN. They expressed the lowest amount of trust in the police and army, with 66 percent and 65 percent, respectively, stating they did not trust them at all. Only 6 percent trusted the police fully, and only 8 percent had full trust in the army.

Respondents also displayed considerable distrust in other institutions, stating that they had no trust at all in political parties (44 percent), the Maoists (43 percent), and Parliament (37 percent). Respondents displayed the greatest amount of trust in the courts, with 80 percent saying they either trusted them fully or to some extent. The majority trusted NGOs (77 percent) and the UN (57 percent).

TABLE 12. HOW MUCH DO YOU TRUST THE FOLLOWING INSTITUTIONS?

How much do you trust the....	Fully		To some extent		Not at all		NO/DK		Total	
	Freq.	%	Freq.	%	Freq.	%	Freq.	%	Freq.	%
Nepal Army	61	8	192	24	527	65	30	3	810	100
Police	52	6	199	25	536	66	23	3	810	100
Courts	154	19	410	51	161	20	85	10	810	100
Parliament	74	9	301	37	299	37	136	17	810	100
Maoists	161	20	249	31	344	42	56	7	810	100
Political parties	74	9	296	37	359	44	81	10	810	100
NGOs	292	36	332	41	78	10	108	13	810	100
UN	271	33	192	24	63	8	282	35	808	100

D. Reparations

When asked whether victims should receive reparations, more than 99 percent of respondents favored them. However, the percentage of respondents who would pursue reparations if they had

the opportunity was lower (84 percent), with 10 percent declaring that they would not pursue any reparations and 6 percent not expressing an opinion.

When asked to agree or disagree with the statement, “Reparations claims will not succeed,” more than a quarter of respondents agreed or strongly agreed. However, 53 percent either disagreed or strongly disagreed, thus expressing some degree of confidence that claims would succeed. Around 22 percent did not have an opinion.

For the majority of respondents (68 percent), reparations should be for individuals. More than 28 percent said they favored community reparations over individual measures. Only 3 percent did not show any preference.

Respondents said that victims’ reparations should comprise a wide range of measures. Most (52 percent) felt compensation should be made available to victims and their families.

“Those who were killed, disappeared during the conflict, physically abused and mutilated should be identified, and compensation should be provided to their families” –male participant, FGD Surkhet, September 2007.

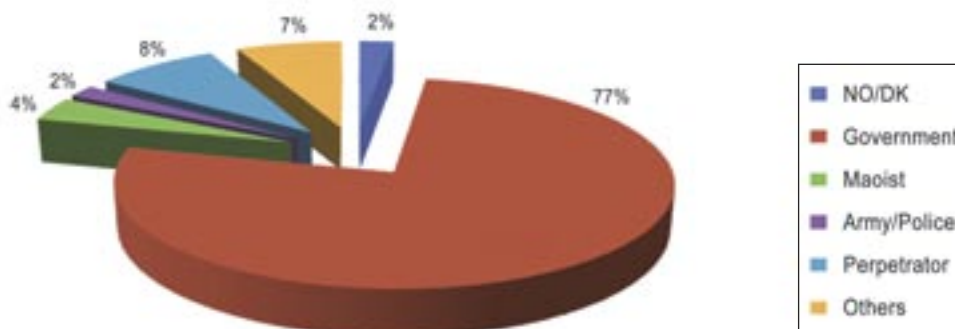
Other types of reparations mentioned included provision of basic needs (12 percent), employment (10 percent), and medical treatment (8 percent). Among those who answered “other forms of reparation” (1 percent), measures included returning land, collective reparations, and construction of memorials. About 1 percent did not know what type of reparations they would like to see for victims.

“Those who have been left injured by the conflict, the state should provide them with adequate medical facilities and psychological treatment” –male participant, FGD Bardiya, September 2007.

“Victims should be provided with employment, education, and medical facilities. Peace and security in the villages is necessary” –Female participant, FGD Kathmandu, October 2007.

Reparations are the most tangible form of recognition and redress that states can provide to victims. In contrast to other forms of criminal accountability that primarily deal with perpetrators or long-term institutional changes, reparations constitute very concrete and immediate acknowledgment of the dignity of the victims and their status as citizens. When asked about who should provide reparations, respondents overwhelmingly identified the government as the main entity responsible (77 percent).

Figure 7. In Your Opinion, Who Should Provide Reparations?



This answer also accords with the 2003 UN international principles on reparations, which highlight the significance of reparations and the responsibility of the state. They affirm:

Adequate, effective, and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, ***a State shall provide reparation to victims for acts or omissions*** [emphasis added] which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.⁹

These views were also reflected in the focus-group discussions. Participants identified the government as mainly responsible in providing reparations.

“Facilitating unconditional homecoming of those displaced, returning the land and assets seized, free medical treatment to the ones made physically incapacitated and mentally afflicted by the conflict, paying all the costs accruing during treatment including bus fares and provisions for the caregivers, all the charges of medical treatment of a seriously injured person who might need a longer stay in the hospital—for example, one having problems with bones—should be borne by the government; jobs must be reserved for people mentally and physically disabled during the conflict” –male participant, FGD Nepalgunj, September 2007.

“The children whose fathers were either killed or physically incapacitated during the conflict should have their education supported by the state, since their mothers alone can’t help them for the purpose. Those who were forced to leave their houses because of the Maoists should be especially looked after by the state” –male former-child-soldier participant, FGD Surkhet, September 2007.

“The families of the disappeared, orphans who lost their parents during the conflict, and those who were physically maimed must be taken care of by the state” –female participant, FGD Biratnagar, August 2007.

Others believed responsible for providing reparations included the Maoists (4 percent), the perpetrators of the violation (8 percent), and the army and police (2 percent). Two percent of respondents did not have a clear opinion about who should provide reparations. It was noteworthy that no one identified international actors as responsible for providing reparations.

⁹Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law, Human Rights Resolution 2005/35, April 2005.

V. Women, Children, and Marginalized Groups

A. Women

Of 348 women who responded to the survey, 132 (38 percent) were victims of at least one human-rights violation. However, this percentage only became apparent when women were asked specifically to provide the details of each family member who had suffered a violation, *including the respondent*. Only 24 (18 percent) of these women had identified themselves as victims at the beginning of the survey. This follows a pattern observed in other post-conflict societies, in which women “generally rely on structures that do not encourage them to think about the ways in which they have been victimized as individuals and as women. Women tend to speak and act more about the victimization of others (usually close family relatives) than of their own.”¹⁰

In comparison with their married and widowed counterparts, single women were more likely to state their condition as victims from the outset (86 percent). Although the sample group here is too small to make accurate generalizations, it shows that when a woman is involved in a relationship or is the head of a family, she will put her family’s needs before her own and her personal experience of violence.

The majority of victims of human-rights violations were men (78 percent). However, it is possible that the women who participated in this survey, as in many other transitional contexts, did not adequately identify the rights that had been violated, due to their view that human-rights violations involve a direct impact on the human body.

The documentation of crimes of individual bodily injury referred to as human rights violations alone may not address the principal dimensions of women’s experiences of human rights abuses.... In many contexts, bodily injury provides too narrow a lens into women’s experiences of authoritarian regimes; other aspects of human rights-abusive contexts, such as the extreme vulnerabilities and structural inequalities created by systems of war or repressive rule, affect women in disproportionate numbers and in ways that have far-reaching human rights implications.¹¹

Any analysis of the conflict in Nepal should include not only the victims of the violations, but those who suffered the consequences in the broader political, social, and cultural settings, as well. One woman from Biratnagar depicts this situation very clearly:

“Our tradition does not allow women to plough land, but they were forced to do that during the conflict. Women had to cremate their loved ones alone. It’s good to perform such works, but our tradition does not allow this. Our patriarchal society directs men to bear financial burdens, but during the conflict women suddenly had to play male roles in addition to their own responsibilities. In the absence and death of male members, women had to bear the financial burden, too” –female participant, Women’s FGD, Biratnagar, August 2007.

¹⁰ Ruth Rubio Marin, *Gender and Reparations: Challenges and Opportunities* (New York: International Center for Transitional Justice, 2006).

¹¹ Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies and Procedures* (New York: International Center for Transitional Justice, July 2006), pp. 8–9.

Information expressed in the focus groups describes a pattern in which women were forced to radically change their normal roles in order to deal with the social, economic, legal, and political consequences of the human-rights violations suffered by their spouses and male family members. This experience is similar to that reported by women in other situations characterized by mass human-rights violations.

During armed conflicts, women are susceptible to marginalization, poverty and suffering, with preexisting inequalities and patterns of discrimination tending to be exacerbated. Whilst the impact of armed conflict on women differs considerably between contexts and between individual women, it is possible to identify common characteristics: widespread sexual violence, the extreme burden which war places on women to ensure their own survival and the care of children and the elderly, and the challenges that war brings to women who decide to take up arms.¹²

“When husbands were displaced, women were the ones who had the responsibility to look after their family. During the conflict, both sides harassed them by seeking food and shelter.... Women had to tolerate behavior ranging from household violence to labor exploitation, trafficking, and rape” –female participant, Women’s FGD, Biratnagar, August 2007.

“It is very difficult for women from both sides to win their position back in the society. For men it is very easy and everything becomes normal for them. But ours is a patriarchal society; society finds it hard to digest similar things about women” –female participant, Women’s FGD, Biratnagar, August 2007.

With regard to gender violence during the conflict, it has been noted that this survey has clear limitations in collecting reliable data on cases of rape and other forms of sexual violence. Among the 1,271 cases of human-rights violations documented, only 15 (1 percent) are related to sexual violence. However, during focus-group discussions with women, they constantly and consistently raised their experiences of discrimination and sexual violence. The main reasons identified by these women for the types of violations they suffered during the conflict were the social oppression and gender discrimination prevalent in Nepali society. This social oppression has denied women access to education, health facilities, and their own voices in the society.

“Women were forced to shelter themselves during the conflict. Given the social conditioning, women lacked self-confidence, and took their restrictions for granted” –female participant, Women’s FGD, Biratnagar, August 2007.

“Women are the greatest sufferers of the conflict. A male can never be raped, while a woman becomes the victim of an incident of rape. A woman has got the pain of being raped. Our society is such that a victim of rape can’t bring to light the injustice meted out on her. The emotional trauma of the incident leaves the life of that woman in a total shambles. The reason behind women’s inability to express their pain aloud is the current social structure and patriarchal

¹² Geneva Center for the Democratic Control of Armed Forces, “Women in an Insecure World,” in Nesiah, *Truth Commissions and Gender* (Ibid).

mindset” –female participant, Women’s FGD, Biratnagar, August 2007.

“I was cooking food when they entered our house. They raped me, and my husband lost his mind for two to three months” –female participant, FGD Kanchapur, September 2007.

B. Children

According to UNICEF, “The armed conflict has severely affected children of all ages. Over the last 10 years, over 300 children have been killed in the conflict. Many more have been injured or detained by either the Maoists or the state’s security forces. The conflict has also rendered children more vulnerable to a variety of abuses and rights violations, especially those who were separated from their families or became orphans.”¹³

Of 1,271 cases, the survey recorded 172 human-rights violations with victims 17 years old or less. In 17 percent of these cases, victims were younger than 10 years old. In 83 percent of cases, victims were between 11 and 17 years of age. Among the human-rights violations registered, three were cases of rape of girls between 11 and 17. The majority of the cases that involved child victims related to male children (67 percent), while 33 percent involved girls.

Participants identified the perpetrators of violations committed against children as the army (49 percent), followed by the police (24 percent), unidentified perpetrators (13 percent), Maoists (12 percent), and other groups (2 percent). It is interesting and understandable to note that the percentage of unidentified perpetrators is higher among children than for any other age group (39 percent of the total cases involving unidentified perpetrators).

In addition, the conflict has affected children’s access to basic services, such as education. In the focus groups, the narratives of former child soldiers and others emphasized the effect of conflict on children, particularly those who served in the Maoist army.

“Barring students from going to school, forcibly taking students from schools and homes to participate in their programs, forcibly recruiting child soldiers, beating, and raping girls” –male former child soldier, Child Soldiers FGD, Surkhet, September 2007.

“The Maoists forced us to join their party, and after we joined them they coerced us into entering politics or frontline warfare. I joined them when I was a kid of 14, not knowing the ways of the world, and they made me bear a load of 25 kilograms” –male former child soldier, Child Soldiers FGD, Surkhet, September 2007.

The children who participated in the focus groups were well aware of the current political situation and the types of human-rights violations that had occurred during the conflict. In addition to their own immediate priorities and concerns, they mentioned the importance of making known the whereabouts of the disappeared. In other words, they had higher levels of awareness than children in general.

¹³ UNICEF, *Situation of Women and Children in Nepal, 2006* (Kathmandu, 2006), p. 3.

“I didn’t have any need to join the Maoists. I was alone at home when a group of Maoists came. They kidnapped me at around 12 o’clock in the afternoon. They forced me to go with them. They forced me to walk for two to three hours. After my forcible departure, I heard that the army personnel visited my house and tortured my parents, asking why they had let me join the Maoists. I went with them to faraway places and suffered much” –male former child soldier, Child Soldiers FGD, Surkhet, September 2007.

“We heard and eye-witnessed many of those incidents where both sides, the state and the Maoists, were responsible. For example, chopping off legs and hands of people; forcing children to attend their meetings. If one failed to attend their meetings, they threatened dire consequences. Later, the security personnel also rebuked the children for participating in the programs organized by the Maoists. The Maoists collected donations in the villages” –male participant, Dalit groups FGD, Baglung, September 2007.

“Making public the whereabouts of the disappeared; providing sufficient relief to their families; making a conducive environment for children like us, who are still there, to return to their homes; making adequate provision for education of those who have come back from there—the state should ensure all our rights” –female former child soldier, Child Soldiers FGD, Surkhet, September 2007.

A recent report released by UNICEF states that the Maoists abducted more than 18,000 children in just three years, 2002–2005.¹⁴ The conflict aggravated the problems of child-trafficking and affected the general well-being of children in the country. However, although children were victimized in different ways during the conflict, none of the agreements explicitly mentions them as a separate group.

Participants in the focus groups strongly expressed the opinion that special provisions must be put in place to address the needs of children affected by the conflict. They also reinforced the need for children’s experiences during the conflict to be understood and dealt with in a broad context that recognizes the many ways they were affected, not simply reduced to their recruitment as child soldiers and their reintegration. The significant role and multifaceted impact of the conflict on children needs to be included in all mechanisms. For example, the experiences and participation of children should play a role in the design and establishment of any future truth-seeking mechanisms, reparations schemes, and models of prosecution, and should be factored into policies for the reform of institutions.

C. Dalits and Other Marginalized Groups

In an armed conflict, people or groups living at the margins of society are most likely to be harmed by human-rights violations. Often there is a correlation between historical marginalization and the effects of the conflict.

¹⁴ UNICEF, *Situation of Women and Children in Nepal* (Ibid).

In Nepal the Dalits, Janajatis (indigenous groups), and Madhesis (from the plains) form almost two-thirds of the population, but have been kept out of the political process, which traditionally has been dominated by the Brahmins, Chhetris, and Newars. In 1990, with the advent of democracy, it was hoped that the discriminatory practices of institutions and social structures would be reformed to adequately recognize and include the excluded groups. Unfortunately, the democratic opening thus far has failed to deliver a new Nepal based on equality among castes, ethnic groups, classes, and genders.

“Dalits have been oppressed since the time of the Shah and Rana dynasty. We have been oppressed by the rulers since time immemorial. As a result, the revolution of Dalits and indigenous groups has come to the fore. The conflict in society persists because of the continuing untouchability and discrimination” –male participant, Dalit groups FGD, Baglung, August 2007.

Although there is no agreement on the number from each community who were victims of human-rights violations during the conflict, it is clear that large numbers of Dalits and Janajatis, especially Tharus, were direct victims in both rural and urban areas. For instance, the survey results show that in the category of enforced disappearance, the highest numbers of cases recorded were from the Tharu (49 percent) and Magar (30 percent) communities.

“It is the aboriginal and ethnic groups who have been directly affected by the decade-long violence; we have been oppressed religiously, linguistically, and communally. There was no respect for ethnic and underprivileged groups” –female participant, Janajatis FGD, Pokhara, August 2007.

Strong indigenous and Dalit-rights movements, calling for greater access to resources and social equality, succeeded in having guarantees inserted in the interim Constitution adopted in 2007. However, reversing years of discrimination is a long process that requires sustained political commitment to social inclusion and equality. Participants in this study recognized the exclusion of Dalits and indigenous groups from many benefits and opportunities available to other social groups as one of the major causes of the conflict. The prospect of a continuing peace may depend largely on whether real changes in social structures and institutions can make sufficient progress in redressing historical injustices and these groups’ feelings of exclusion.

VI. Conclusions and Recommendations

A. Conclusions

The participants in this study stated clearly that they believe perpetrators should be tried in national courts for their crimes, and should not be given amnesty. They believe a commission should be established to determine the truth of what has happened and why, so that the horror of the past decade will not be repeated in future; and also that the whereabouts of those who have disappeared must be revealed. The government should provide victims with reparations, and there is a great need for reform of the security sector and legal institutions. The respondents' experience with law-enforcement agencies has been deplorable; accordingly, respondents have little confidence in the way these institutions currently operate.

The respondents expressed the following opinions in the survey.

Causes

Social problems, such as long-standing structural inequality, "untouchability," and entrenched caste inequality, were universally identified as major causes of the conflict. In the words of two victims who participated in the focus groups,

"The reason behind the conflict is the prevalent discriminatory practice among different classes, the haves and the have-nots, educated and illiterate, various castes and creeds, various religions, oppressors and oppressed, and male and female."

"The government hadn't paid attention to the demands of the people and civil society. The state didn't notice what was happening inside the country."

Political developments

A significant majority (71 percent) of respondents had either heard or read about the CPA, although about a quarter of respondents had not. A larger number of respondents (82 percent) had heard about the CA elections.

The overwhelming majority (90 percent) said that individuals involved in human-rights violations should not be able to participate in the CA elections.

More than half of respondents said that they did not know what should be included in the Constitution to ensure an independent and fair justice system in the future.

Truth

Across the regions, castes, and ethnic groups there was consensus on the need to investigate human-rights abuses and to establish an accurate historical record of the conflict, to ensure that the human-rights violations do not re-occur. Respondents believed that a commission should establish the whereabouts of those who have disappeared. A Truth and Reconciliation Commission should be established, and its primary object should be to:

- Find out the truth about the past (19 percent);
- Provide justice to the victims (19 percent);
- Provide compensation to the victims and their families (16 percent).

Very few respondents believed that a TRC would end the culture of impunity (0.3 percent), bring equality to Nepal (0.2 percent) or end the killings and violence (0.2 percent).

Many respondents agreed that a TRC must be different from previously established commissions, which have a disappointing record. Such a commission must ensure adequate participation of victims, women, children, and marginalized groups. It should be established only after broad consultation and a transparent process to appoint commissioners, and it must ensure that its mandate and functions reflect the desires and gain the support of the people. Commissioners should have a demonstrated ability to act in an objective way and not be influenced by political factors. They should include experts and representatives of victims and marginalized communities. Including representatives of those suspected of perpetrating violations would destroy any hope of the commission's success.

Respondents felt that a TRC should have a broad mandate that would enable it to inquire into the background and causes of the conflict, the patterns of violations, who was responsible, and the impact, including socioeconomic and psychological effects on individuals and families.

No one in the focus-group discussions suggested that the TRC should provide amnesty.

Justice

The overwhelming majority of the respondents (90 percent) wanted trials and punishment of those found responsible for past human-rights violations. A mere 6 percent did not want trials for abuses committed during the conflict. A significant majority (69 percent) supported holding trials in Nepal. Despite their strong support for national trials, respondents also recognized that the current laws may prove inadequate to carry out effective prosecutions. A significant majority agreed that trials should not be delayed, and should be held within two years.

The views of respondents on whether holding trials would endanger peace were almost equally divided, with a slightly higher number believing that such a process would *not* endanger peace. Respondents were also roughly split about whether trials would endanger reconciliation.

Access to Justice

The survey results present an extremely troubling picture in relation to the ability of victims to report crimes committed against themselves or family members, the low level of confidence they have in official law-enforcement institutions, and the poor performance of these institutions in dealing with serious crimes committed during the conflict.

Approximately 80 percent of respondents had neither read nor heard about the district peace committees, and 75 percent were unaware that victims had to register their cases with the CDOs.

The respondents had all suffered violations. However, only about half had filed complaints following the incidents, and only a small proportion had followed the official procedure of filing a complaint with the police or the CDOs. Those who filed complaints presented them mainly to

human-rights organizations and CDOs. Respondents also stated that institutions such as the Nepal Bar Association, human-rights organizations, and the National Human Rights Commission had been helpful in addressing their complaints.

The data showed that almost two-thirds of respondents filing complaints with police said that no action was taken, they were harassed, or their complaint was refused and not registered. Respondents had similar experiences with 60 percent of cases brought to CDOs and 50 percent of cases brought to courts.

More than 80 percent felt the army would be not helpful and would ignore or obstruct their complaint. Eighty percent felt the same about bringing complaints to the police. Responses also showed low expectations of the CDO, with 69 percent believing they would be not helpful and would ignore or obstruct their complaint.

When asked about their expectations of the court process, only 31 percent expected it to be easy to understand, and 36 percent expected the process to be independent and fair. A mere 9 percent felt they could afford a lawyer or representation in a legal case.

When asked which government institutions should be reformed, 23 percent of respondents said the security forces should be given high priority. Thirteen percent stated that all government organs needed reform, and 12 percent prioritized the CDO in their area.

Trust in Institutions

Respondents had the lowest amount of trust in the police and army, with about two-thirds of respondents stating they did not trust them at all. Only 6 percent trusted the police fully, and only 8 percent had full trust in the army.

Answers reflected considerable distrust in other institutions, with around 40 percent of respondents stating they had no trust at all in political parties, the Maoists, and Parliament. Respondents displayed the greatest amount of trust in the courts, with four-fifths saying they trusted them fully or to some extent, followed by NGOs and the UN.

Attitudes toward Amnesty and Forgiveness

While almost two-thirds of respondents claimed to know the meaning of the term “amnesty,” about one-third said they had never heard the term before. Among those who knew the meaning of the word, three-quarters said human-rights violators and perpetrators should not receive amnesty for their crimes.

Serious and Less-serious Crimes

Almost four-fifths of respondents stated that a distinction should be made between those who had committed serious crimes and those who had perpetrated less-serious crimes, indicating that an alternate mechanism, and perhaps amnesty, might be acceptable to deal with the latter.

Reparations

When asked whether victims should receive reparations, more than 99 percent of respondents favored them.

For more than two-thirds of respondents, reparations should be individual, while fewer than 30 percent said they favored community reparations. Participants felt that any compensation or reparations scheme should take special account of the impact on and needs of women, children, and marginalized groups such as Dalits.

Reconciliation

Eighty percent defined reconciliation as living in peace and harmony with everyone. Only a very small number equated reconciliation with forgetting the past or granting amnesty to perpetrators.

Immediate and Future Needs

The majority of responses concerning immediate needs were related to basic requirements such as health, education, housing, clothing, and employment, and less associated with wider issues such as the consolidation of peace. However, when victims were asked to identify future needs, their perceptions changed significantly. Aside from compensation and education, respondents emphasized the need to achieve peace and security in the country.

Women, Children, and Marginalized Groups

Participants in the focus groups described a common pattern whereby women were forced to radically change their normal roles to deal with the social, economic, legal, and political consequences of the human-rights violations suffered by their spouses and male family members. Sexual violence and rape were significant factors in the conflict, but accurate information is difficult to obtain because of the social stigmas that are unfairly attached to innocent victims of these crimes. Victims of sexual crimes in Nepal find themselves unable to recover a position of respect within their social group and community.

Children were both involved in and victims of the conflict, including rape of young girls, and the psychological effect of the conflict and its incumbent fear on family units were common themes reported by participants.

Participants recognized the exclusion of Dalits and indigenous groups from many benefits and opportunities available to other social groups as one of the major causes of the conflict. It is clear that large numbers of Dalits and Janajatis, especially Tharus, were direct victims of human-rights violations in both rural and urban areas.

B. Recommendations

The CPA, signed in November 2006, promised the establishment of both a Commission on Disappearances and a Truth and Reconciliation Commission within four weeks. But almost one and a half years later, little progress has been made toward fulfilling victims' rights to truth and justice.

Creating and implementing mechanisms that can deal with deep-rooted anger, pain, and loss are extremely complicated challenges. The process must begin with a foundation that provides those most affected with a feeling of connection and ownership, and encourages a broad-based desire to participate and assist. Otherwise, steps taken will be met with resistance, and the results will not be accepted. Transitional-justice initiatives in Nepal must not be the result of knee-jerk reactions. They urgently need to be created, but only on a solid base of broad consultation, careful planning, and an integrated approach involving truth-seeking, prosecution, provision of reparations for victims, and institutional reform.

The current situation, in which there is little observable progress on justice, truth, and accountability, increases the risk that unresolved issues related to past violations may seriously affect the peace process. The government should develop a clear transitional-justice strategy based on prioritizing the most urgent needs and a timeline for implementation of programs. National civil-society actors must play an important role in this process. Like other post-conflict nations, Nepal is facing these challenges for the first time, and therefore can benefit significantly from the experiences and lessons learned in other contexts. Drawing on this experience, the international community should recognize the importance of these issues and offer expertise, financial support, and practical assistance.

One immediate step that could be prioritized is the establishment of an independent Commission on Disappearances, the mandate of which would be limited to investigating and determining the whereabouts of the disappeared. This limited mandate would allow for relatively quick start-up, and would avoid the broader, complex issues of context and responsibility that the TRC must deal with in depth. The findings of the Commission on Disappearances could be submitted later to the TRC.

To the Government of Nepal

- *Create an official joint task force on transitional justice* comprising representatives from the government, civil society, National Human Rights Commission, victims, and the UN.
- *Establish and publish a timeline for action on transitional-justice mechanisms*, including the Commission on Disappearances and the Truth and Reconciliation Commission, to replace the schedule included in the CPA.
- *With the task force mentioned above, conduct broad-based national consultations on the Truth and Reconciliation Commission*, to gather stakeholders' views on the Commission's mandate, powers, goals, and timeframe. Such a Commission should not be established until victims are able to participate safely in its proceedings. The mandate should be broad and include the ability to examine the background, causes, and impacts of the conflict, as well as to identify institutions and individuals responsible for serious violations. A key requirement is a public process to appoint commissioners who are independent, impartial, and not motivated by political factors.
- *Establish a team to investigate and implement reforms* of the currently dysfunctional system for dealing with complaints by victims of politically motivated crimes and violations.

- *Ensure that prosecution of those suspected of involvement in serious crimes against Nepali law proceeds*, irrespective of their institutional positions or political affiliation.
- *Establish a team of legal experts to compile draft laws to deal with the recent history of mass violations*, which were not anticipated by current national laws.
- *Request assistance from international reparations experts* to draft a comprehensive system of victims' reparations to replace the current ad hoc compensation programs.

To Civil Society in Nepal

- *Increase coordination and collaboration* among local and international organizations working on transitional-justice issues in Nepal.
- *Conduct public education on transitional justice* that is not limited to the Truth and Reconciliation Commission, but which encourages a holistic approach to the past.

To the International Community

- *Increase offers of practical support and assistance* relevant to transitional justice to government and civil society.
- *Recognize that transitional justice issues are not short-term but long-term, essential building blocks of sustainable peace* that will be part of Nepal's future for many years to come, and formulate programs of assistance and capacity building accordingly.
- *Increase the level of coordination and cooperation* related to transitional-justice issues in Nepal.

Annex 1: Demographics of the Respondents

Researchers conducted 811 interviews during the data-collection process. The majority of the responses came from Banke (15 percent) and Bardiya (22 percent). Of the respondents, 57 percent were male and 43 percent female. However, of the total number of women responding to the survey, only 6 percent identified themselves as victims, while 27 percent of the men recognized themselves as victims (see Chapter V).

The mean and median ages were 42 and 41, respectively. Comparing these results with the median age of the country's population (19.2), we observed an increase of 22 years.¹⁵ This distortion might be explained by the presence of some elderly people in the survey and, most important, by the particular characteristics of the people responding to the survey. Comparing these results with the ages of the victims reported disappeared or killed by those families answering the survey, one can see that 32 percent of these victims were between 18 and 40. If torture victims in the same age range are added, the percentage would rise to 70 percent. Only 15 percent of victims between 18 and 40 responded to the survey themselves compared with 35 percent of responses from parents of victims in this age range.

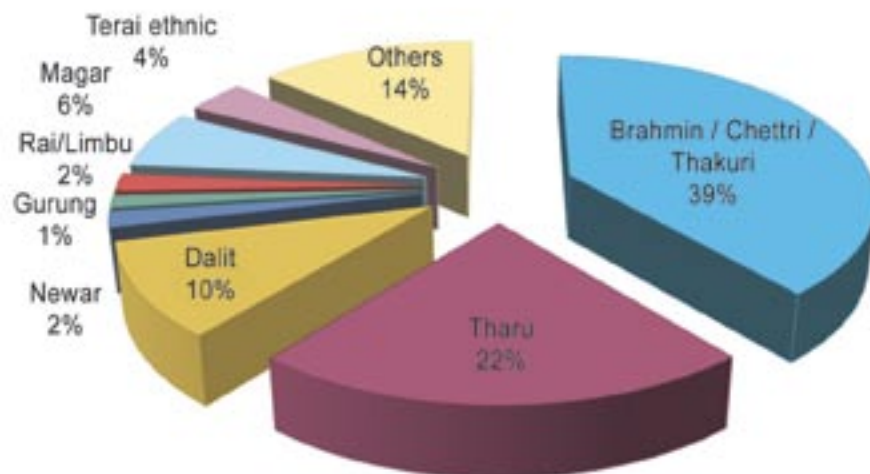
The majority (76 percent) of respondents were married, while 16 percent described themselves as widows or widowers. Almost half of the respondents had received no education, although 17 percent said they knew how to read and write. Of those who had access to formal education, 7 percent had studied up to primary level, 15 percent had completed secondary-school studies, and 12 percent had studied above School Leaving Certificate level. The most recent data provided by the United Nations Population Fund reveal that illiteracy levels in Nepal are at 35 percent for males and 70 percent for females. These statistics echo the illiteracy distribution by gender in this survey—33 percent of men and 70 percent of women.¹⁶

More than 68 percent of the respondents were farmers; 8 percent were businessmen/women, generally involved in small-trade activities, and 7 percent worked as unskilled laborers (construction workers, land laborers, etc.). In all, 39 percent of respondents identified themselves as members of the Brahmin, Chettri, or Thakuri castes, and 22 percent said they belonged to the Tharu ethnic group. Other ethnic group affiliations mentioned were Dalit (10 percent), Magar (6 percent), various Terai ethnic groups (4 percent), and Rai/Limbu (2 percent).

¹⁵ United Nations Population Fund, *Nepal Indicators and Policy Developments*, www.unfpa.org/profile/nepal.cfm, accessed Dec. 30, 2007.

¹⁶ A person is considered illiterate if he or she has not had access to formal education and does not know how to read or write.

Figure 8. Caste and Ethnic Groups



Most of the respondents (92 percent) defined themselves as Hindus. A small proportion identified themselves as Buddhist (4 percent), Muslim (2 percent), Kirat 1 percent), Christian (0.5 percent), or Sikh (0.1 percent), and 1 percent mentioned following “other religious beliefs.”

More than half of the respondents stated that Nepali was their main language; 22 percent identified Tharu as their main language; while 7 percent and 5 percent, respectively, identified their main language as Abadhi or Maithili. A total of 10 percent mentioned other languages, such as Newari, Magar, and Bhojpuri. One possible explanation for the relatively high percentage of Tharu speakers is that many of the victims interviewed were from the districts of Banke and Bardiya, which have a significant Tharu population.

Most Important Sources of Information on Social and Political Issues

The main news source for the majority of respondents was reported to be radio (65 percent), followed by family and friends (10 percent), television (7 percent), and newspapers (5 percent). Radio is a major source of information, not only because radios are relatively cheap, but also because a high percentage of the respondents are illiterate. Radio is the most widespread and available means of communication in the country. Other sources of information include community leaders (3 percent), social organizations (0.5 percent), and the Internet (5 percent).

When asked about their political affiliations, 25 percent of respondents identified themselves as members of a political party, while 75 percent claimed no affiliation. Of the respondents affiliated with a political party, 49 percent were members of the Communist Party of Nepal–Maoist (CPN–M), 23 percent were members of the Nepali Congress (NC), 20 percent of the CPN (Unified Marxist–Leninist), and 5 percent of the Rashtriya Prajatantra Party (RPP). The remaining 4 percent were in other parties, such as the Rashtriya Janshakti Party (RJP).

Figure 9. Respondents' Political Affiliation

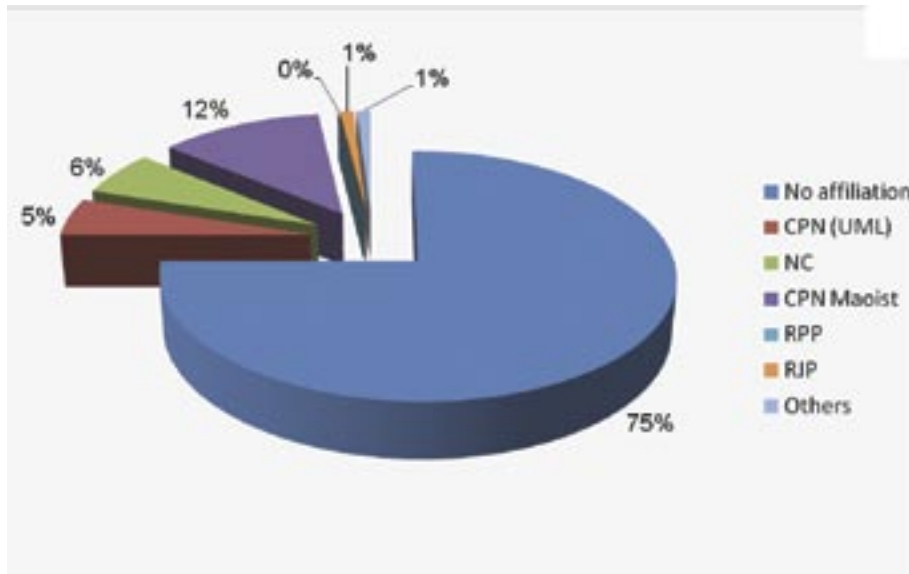
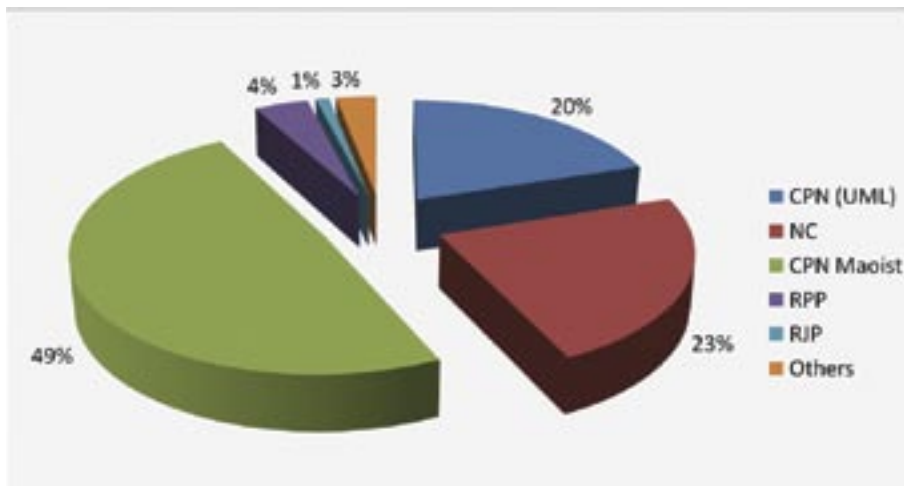


Figure 10. Political Affiliation of Those Who Declared Having One



Note: Responses based on those who identified themselves as members of a political party (25 percent of survey respondents).

Annex 2: Districts Sampled in the Survey

1. Baglung
2. Banke
3. Bardiya
4. Dhading
5. Dhanusha
6. Kanchanpur
7. Kapilbastu
8. Kaski
9. Kathmandu
11. Morang
12. Ramechhap
13. Rolpa
14. Rukum
15. Rupandehi
16. Surkhet
17. Udayapur

Annex 3: Surveyors and Data Entry Staff

Surveyors

1. Nirmal Upreti
2. Madhu Sudhan Dawadi
3. Bhanu Bhakta Adhikari
4. Yuvaraj Sharma
5. Sabita Regmi
6. Dinesh Bohara
7. Laxmi Shapkota
8. Poonam Shrestha
9. Bhauch Prasad Yadav
10. Hari Krishna Koirala
11. Shiva Raj Joshi
12. Poonam Adhikari
13. Yuvaraj Lamichanne
14. Sajag Adhikari
15. Raj Kumar Dhakal
16. Bibek Devkota
17. Krishna Bhattarai
18. Nira Kandel
19. Mani Ram Gyawali
20. Ambika Pahadi
21. Rabindra Kunwar
22. Uma Puri
23. Bijay Katuwal
24. Anjani Shrestha
25. Prem Raj Pant
26. Ranju KC
27. Sujan Kayastha
28. Sita Bhatta
29. Nabin Bhatta
30. Nabin Osti
31. Pushpa Ghimire
32. Prem Bahadur Kunwar

Data-Entry Staff

1. Rashmi Basnet
2. Sumitra Pokharel
3. Shradha Upadhya
4. Babin Pokharel
5. Kamala Sharma
6. Birendra Pathak
7. Awaaj Khati



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