

POLICY BRIEFING PAPER

Role of provincial and local governments in reparation Addressing immediate reparative needs of conflict victims in Nepal

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About the organizations

About International Alert

International Alert has worked for over 30 years to lay the foundations for sustainable development. Working in over 25 countries, we aim to support governments own development efforts and help build skills and capacity through strengthening government service delivery system, promoting community voice and resilience to gender-based violence, and support inclusive development initiatives. International Alert has been working in Nepal since 2004 on issue of access to justice service, participatory local governance and community development and safety and socioeconomic empowerment of women and youth. More details at www.international-alert.org

About FWLD

Forum for Women, Law and Development (FWLD) is an autonomous, non-profit, non-governmental organization established on May 29, 1995 to work for the protection, promotion and enjoyment human rights. In order to eliminate all forms of discrimination, FWLD uses law as an instrument to ensure the rights of women, children, minorities, conflict victims and all other marginalized groups. FWLD has been involved in filing noteworthy Public Interest Litigations (PILs), a tool used for the reform and for the effective enforcement of laws. Through PILs, FWLD has been successful in criminalizing marital rape, in ensuring confidentiality to victims and witnesses in many cases of gender-based violence including cases of transitional justice. More details at www.fwld.org

About TPO Nepal

Transcultural Psychosocial Organization Nepal (TPO Nepal) is one of Nepal's leading psychosocial organization established in 2005 with the aim of promoting psychosocial well-being and mental health of children and families in conflict affected and other vulnerable communities. TPO Nepal is a knowledge-driven, innovative organization working in areas disrupted by violence and poverty. We strive to develop local psychosocial, mental health and conflict resolution capacity and systems that promote community resilience, quality of life and self-reliance through education, research, service delivery and advocacy. TPO Nepal is a member center of International Rehabilitation Council for Victims of Tortures (IRCT) More details at: <https://tponepal.org>

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Introduction

The Nepal government must provide reparations as compensation for the harm caused and the trauma still being experienced by thousands of individuals and families following the aftermath of the decade long armed conflict.¹ Providing reparation is not just a policy choice but an obligation owed to victims as a result of an unlawful breach of international and domestic law during the conflict. Victims of gross violation of human rights and humanitarian law have a right to reparations and States have a corresponding obligation to respect, protect, and fulfill this right.² Reparation serves as a vehicle for acknowledging past violations and state responsibility for harms suffered by victims as well as a public commitment to respond to their enduring impact.³ Domestic reparation programs are considered to be the most effective tool for victims to receive reparation.⁴ It is important to note that reparation not only means compensation but measures including restitution, rehabilitation, satisfaction, and guarantees of non-recurrence.⁵ Reparation must be “adequate, effective and prompt” building upon the principle of “full reparation”.⁶ Reparation can take place as individual or collective, material or symbolic reparation, or both.⁷

While framing the discourse around reparations in Nepal, it is important to note that the transitional justice agenda has mainly been centralized due to Nepal adopting federalism only in 2015 with promulgation of the new Constitution. The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 (TRC Act) was adopted in the unitary (centralized) context. Given the above circumstance this policy paper aims to explore the roles of the provincial and local level governments in delivering reparation in general and addressing the immediate needs of victims. This paper seeks to support the provincial and local governments to undertake reparation initiations within their jurisdiction, powers, and functions as prescribed by the Constitution of Nepal (2015), the Local Government Operationalization Act 2017, and the TRC Act 2014.

¹ Article 8, Universal Declaration of Human Rights 1948; Article 2(3)(a) of International Covenant on Civil and Political Rights, 1966; Article 6, International Convention on the Elimination of All Forms of Racial Discrimination 1965, Article 14, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Article 39, Convention on the Rights of the Child, 1989; Article 24(4), International Convention for the Protection of All Persons from Enforced Disappearance, 2006; Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, A/69/518, 14 October 2014 and Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019.

² Ibid.

³ ICTJ, *Reparations in Theory and Practice*, 2007

⁴ Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019

⁵ Principle 15-23, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

⁷ ICTJ, *Reparations in Theory and Practice*, 2007, pp.3-7 & Friedrich Rosenfeld, Collective reparation for victims of armed conflict, *International Review of Red Cross*, Vol. 92, No. 879, September 2010, pp. 731-732.

Armed Conflict in Nepal

Between 1996 and 2006, Nepal witnessed a decade long armed conflict between the Government of Nepal and the then Communist Party of Nepal (Maoist) (CPN (Maoist)). The armed conflict left over 13,000 people dead and over 1,000 disappeared.⁸ The TRC Act recognizes the following categories of human right violations committed by the parties during the conflict:

1. Murder
2. Abduction and taking of hostages
3. Enforced disappearance
4. Causing mutilation or disability
5. Physical or mental torture
6. Rape and sexual violence
7. Looting, possession, damage, or arson of private or public property
8. Forceful eviction from house and land or any other kind of displacement
9. Any kind of inhuman acts inconsistent with international human rights or humanitarian law or other crimes against humanity.⁹

The armed conflict ended formally with the signing of the Comprehensive Peace Accord (CPA) on 21 November 2006. However, the years that followed were characterized by a tug-of-war between civil society, victims groups, and successive governments over contents and mandate of proposed transitional justice mechanisms.¹⁰ This resulted in significant delays in the formation of transitional justice mechanisms.

On 25 April 2014, the Nepalese Parliament passed the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 (TRC Act) that paved a way to establish the TRC and the Commission of Investigation on Enforced Disappeared Persons (CIEDP). In February 2015, the two commissions were constituted with a mandate of two years and the possibility of one-year extension. When the TRC and CIEDP called for filing complaints regarding human rights violations, the TRC received 62,878 complaints and the CIEDP received 3,093 complaints.¹¹ However, as of May 2020, the mandates of these commissions have been extended thrice and the tasks of these commissions are far from finishing. Consequently, no reparation and compensation has been provided to conflict victims and families.

⁸ Office of High Commissioner for Human Rights (OHCHR), Nepal Conflict Report 2012, pp. 14-23

⁹ Section 2(j), TRC Act

¹⁰ Nepal: Transitional Justice at Crossroads,

<http://www.advocacyforum.org/downloads/pdf/publications/tj/transitional-justice-at-crossroads-2014.pdf>

¹¹ Press releases of the TRC and CIEDP

Policy recommendations for provincial and local governments on addressing immediate reparative needs of conflict victims in Nepal

The Constitution of Nepal (2015) adopted federalism in Nepal with three tiers of government: local, provincial, and federal. As of today, Nepal consists of 753 local governments, seven provincial governments, and one federal government. Adopting reparation programs is a primary obligation of the federal government but reparation programs cannot be effectively designed, implemented and monitored without support and contribution of the provincial and local governments. The local governments are responsible for supplying good and services to the general public at local level¹² whereas the provincial governments act as a bridge between the federation and local governments.¹³ The roles of provincial and local governments are crucial in setting up victims' registries; evidence and special measures in registration processes; consultation with and participation of victims; institutional security of domestic reparation programs, and ensuring the availability of financial resources that are requisites for making domestic reparation programs effective.¹⁴

Considering the legal framework including the Constitution, the TRC Act, and Local Government Operationalization Act 2017, the policy recommendations for provincial and local governments in addressing reparative needs are as follows:

1. Consultation with conflict victims and assessment of reparative needs of

conflict victims: The provincial and local government generally and local government particularly should play a crucial role in having meaningful engagements with conflict victims to identify their reparative needs and to design and implement reparation programs in future.

- Provincial government
 - Organize province-level consultations with conflict victims.
 - Develop programs for addressing conflict victims' needs and set priorities.
 - Facilitate the communication of conflict victims' needs and demands with the federal government.
- Local government
 - Organize local level consultations with conflict victims.
 - Document the needs of conflict victims' and develop programs to address those needs.
 - Facilitate the understanding of provincial and federal governments of the needs and demands of conflict victims' so that a comprehensive reparation policy will be adopted.

2. Setting up conflict victims' registries: Individual and collective registries of victims

¹² Local Government Operationalization Act 2017

¹³ Cabinet Unbundling of Powers between the Federation, Province, and Local Governments

¹⁴ Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019

are crucial to project realistic levels of victimhood in States undergoing transitions.¹⁵ Therefore provincial and local governments should work to building strong registries of conflict victims in Nepal. Local governments should collect and maintain updated records of conflict victims residing in their territory whilst ensuring the confidentiality of the records. Local governments should coordinate with the provincial government to set up these registries at provincial level, and with the federation so there is a national registry too. Likewise, the provincial governments should also lead on setting up conflict victims' registries at provincial level and facilitate between the federation and local governments to help set up these conflict victims' registries.

3. **Identity cards for conflict victims:** Victims have demanded identity cards to be issued to all conflict victims to help restore and maintain dignity and honour, as well as include clarifications on facilities and concessions it entails. As part of acknowledging the victimhood, local governments should adopt the necessary guidelines as a part of maintaining local records on conflict victims as per power conferred by the Constitution and Local Government Operationalization Act 2017 and provide a provisional identity card to conflict victims within their jurisdiction. It is necessary to treat this identity card different from the national victim identity card that is issued by the federal government. To this end, the provincial government should work with the federal government to provide national identity cards for conflict victims whereas the local governments should provide a provisional identity card to conflict victims.
4. **Establishment of an appropriate reparation system:** Provincial and local governments should play a crucial role in the establishment of an appropriate reparation system in Nepal. As Nepal does not have a national reparation system, the provincial and local governments should undertake the following activities:
 - Provincial government
 - Liaise between the federation and local governments in implementing reparation programs.
 - Local government
 - Allocate a separate budget heading for conflict victims.
 - Provide financial assistance and social security allowance to conflict victims.
 - Provide scholarship and other academic support for conflict victims and children of conflict victims.
 - Make provisions for a free health check-up and psychosocial counseling. To this end, provide necessary training including psychosocial counseling to local health workers and mobilize them for counseling and referral support.
 - Establish local programs that create employment opportunities for conflict victims.
 - Establish legal aids programs for conflict victims who need support in seeking legal remedies and justice as well as support in family issues such as transfer of ownership of land registered in the name of a disappeared family member.

¹⁵ Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019

- Ensure gender and social inclusion sensitive reparation programs are adopted and implemented.
- 5. Financial resources for reparations:** Reparation programs require financial resources that should be contributed to by the federal, provincial, and local governments. For example, in Colombia, a fund was created under the Justice and Peace Law, in 2005 which was funded by assets given up by members of paramilitary groups, contributions from the Colombian budget, and any national or international donations.¹⁶ The fund was established and maintained under the Victims and Land Restitution Law of 2011. The latter law included new sources for financing reparations, such as fines obtained by the State from persons or armed groups in judicial or administrative processes, and voluntary donations made by people in supermarkets or at cash machines.¹⁷
- Provincial government
 - Establish a provincial level reparation fund that can provide financial support for provincial level reparative measures and also budget for local governments if needed.
 - Local government
 - Establish a reparation fund at the local level that supports reparative initiatives and engagement with conflict victims.
 - Allocate a separate budget heading for conflict victims that supports livelihood support programs and economic empowerment of victims.
- 6. Employment:** According to Schedule 8 and Local Government Operationalization Act, the local governments are responsible for maintaining and updating unemployment related statistics.¹⁸ This means while updating and maintaining such statistics, the local governments can specifically collect data on conflict victims which allows them to design and implement activities addressing the unemployment problem.
- 7. Education and vocational training:** One of the important reparative needs is related to free education for conflict victims and their children. The local governments should design and implement plans concerning technical education and vocational training. The provincial and local governments can provide scholarship schemes to conflict victims and their children as well as rename the schools in memory of victims if deemed appropriate.
- 8. Health care services and psychosocial counselling:** Many victims of torture and families of conflict victims are under regular medication to help them cope with the psychological as well as physical trauma they were subjected to. Victims of rape and

¹⁶ Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, A/69/518, 14 October 2014, and Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019.

¹⁷ Ibid.

¹⁸Section 11(2)(q), Local Government Operationalization Act 2017

sexual violence face trouble accessing medical care due to stigma attached to it. The provincial and local governments can adopt various measures for conflict victims such as free medical check-up, reproductive health support for victims of rape and sexual violence, and psycho-social counseling based on the provision to make policy, law standards, plans relating to basic health, sanitation, and nutrition at the local level and provincial level respectively.

- 9. Legal aids and recommendation certificates:** The Local Government Operationalization Act 2017 grants power to the village or municipal executive to make recommendations on any matter, unless any other agency is specified under any particular law. This allows the local governments to make necessary recommendations and certifying their status as victims.
- 10. Promote symbolic reparation and memorialization:** Symbolic reparation and memorialization works are important to promote a sense of satisfaction in conflict victims and guarantees non-recurrence in the society as a whole.
- Provincial government
 - Engage with conflict victim groups, and initiate and support provincial level memorialization works.
 - Local government
 - In consultation with victim groups, design special programs and projects for victims' communities in particular in the areas of collective reparations promoting memorialization initiatives at the local level.
 - Acknowledge victims' suffering and issue public apologies where deemed appropriate after consultation with conflict victims.
- 11. Support for ongoing initiatives of conflict victims:** The provincial and local governments should support ongoing initiatives of conflict victims.
- Provincial government
 - Facilitate ongoing initiatives of conflict victims and provide support to local governments.
 - Local government
 - Promote cooperatives created and operated by the conflict victims.
 - Adopt measures towards encouraging entrepreneurship and self-employment as well as schemes that give priority to conflict victims in terms of offering and mobilizing micro-credits.
 - Make provision for scholarship opportunities and vocational training opportunities.
 - Support conflict victims engaged in the agriculture and livestock sectors
 - Support and take ownership of memorialization works ongoing at the local level.
 - Engage conflict victims especially youths in sports activities and promote peace and reconciliation at the local level.

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