



POLICY RECOMMENDATIONS  
on the REPARATIVE  
RIGHTS of VICTIMS

*Defending Human Rights for 20 Years*

# Policy Recommendations on the Reparative Rights of Victims

**June 2022**



Advocacy Forum - Nepal

# Policy Recommendations on the Reparative Rights of Victims

First Edition: June 2022

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*Publisher*

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Layout & Cover design: Kishor Pradhan

This report is produced with generous support from Ziviler  
Friedensdienst Civil Peace Service

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## **ACKNOWLEDGEMENTS**

This report was written and prepared by Dr. Mandira Sharma, with research assistants Anna Freynet and Amisha Adhikari.

The researcher wishes to thank Om Prakash Sen Thakuri, Bikash Basnet, and colleagues of Advocacy Forum-Nepal for providing essential input and support.

The law and facts are stated as of April 2022.

**Advocacy Forum-Nepal**

## INTRODUCTION

International law obligates States to ensure the right to an effective remedy for victims who suffered gross human rights violations. Jurisprudence developed to expand the understanding of ‘effective remedy’ includes not only investigation and prosecution, but also reparation. It also expands the understanding of reparation by articulating that reparation encompasses different elements such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. However, reparation is yet to be recognized by Nepalese law and be realized in Nepal. Although reparation is increasingly discussed in the context of transitional justice, no normative framework exists on how reparations should be designed and implemented in Nepal.

Compensation as a form of remedy is commonly used in Nepal. Most notably, the 2015 Constitution guarantees the right to compensation to victims whose rights have been violated.<sup>1</sup> In 2018, eighteen Acts were enacted to implement these fundamental rights guaranteed by the Constitution. Some of the laws, like the Crime Victim Protection Act 2018, set out provisions for compensation and other relief for victims of crimes.

However, outside of compensation, the other forms of reparation defined by international law have yet to be

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<sup>1</sup> Under Article 21.

realized. Although compensation is a form of reparation, the latter includes other elements too, providing a broader range of support to victims, including satisfaction. International institutions like the United Nations Human Rights Committee have reiterated States' obligation to provide reparation in a number of cases.

Although international law was also focused on compensation in the early stages of its development,<sup>2</sup> it has gradually evolved to include rehabilitation measures (including medical and psychological care), expanding the jurisprudence on reparation.<sup>3</sup>

Regarding Nepal more specifically, in the Surya Prasad Sharma case, for example, the HRC in 2006 found *“the State party is under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author’s*

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<sup>2</sup> See, for instance, Human Rights Committee, Laureano Atachahua v. Peru, Communication No. 540/1993, U.N. Doc. CCPR/C/56/D/540/1993. 1996 ; Human Rights Committee. Pestahio v. The Philippines, Communication No. 1619/2007, U.N. Doc. CCPR/C/98/D/1619/2007. 11 May 2010 ; Human Rights Committee. Zhumbaeva v. Kyrgyzstan, Communication No. 1756/2008, U.N. Doc. CCPR/C/102/D/1756/2008. 2011.

<sup>3</sup> See for instance Human Rights Committee, Nathaniel Williams v. Jamaica, Communication No. 609/1995, U.N. Doc. CCPR/C/61/D/609/1995. 4 November 1997; Human Rights Committee, McCallum v. South Africa, Communication No. 1818/2008, UN Doc CCPR/C/100/D/1818/2008. 2 November 2010.

*husband, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the author and her family for the violations suffered by the author's husband and by themselves. ...The State party is also under an obligation to take measures to prevent similar violations in the future.*"<sup>4</sup> Similar reasoning can be found in other cases, like the 2008 Yubraj Giri one.<sup>5</sup> Thus, for the Human Rights Committee, restitution, guarantees of non-repetition, and measures of satisfaction are directly included alongside compensation in the frame of the State's reparative obligations.

In a similar manner, the Nepal Supreme Court has reiterated the State's obligation to provide reparation for conflict victims and emphasized the importance of reparation in the transitional justice process. It not only recognized monetary compensation but also acknowledged the right to reparation under its various forms for victims who suffered gross violations of their human rights.

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<sup>4</sup> See Human Rights Committee, *Sharma v. Nepal*, Communication No. 1469/2006, U.N. Doc. CCPR/C/94/D/1469/2006. 6 November 2006. Available at <http://www.advocacyforum.org/downloads/pdf/publications/Sharma-Vs-Nepal.pdf?m=1514801408>.

<sup>5</sup> See Human Rights Committee, *Yubraj Giri v. Nepal*, Communication No. 1761/2008, U.N. Doc. CCPR/C/101/D/1761/2008. 27 April 2011. Available at <http://www.advocacyforum.org/downloads/pdf/un-hrc-views-on-giri-case.pdf?m=1514801384>.



For example, in its landmark judgment in relation to 83 cases of enforced disappearances in June 2007, the Supreme Court of Nepal ordered the government “to provide immediate relief of interim nature to the victims considering the physical and mental torture as well as the economic loss that the families of the victim have had to undergo during their search and taking recourse to the process for obtaining justice.” In addition to interim relief, it also ordered the enactment of legislation that would criminalize enforced disappearances and take into account the new International Convention for the Protection of all Persons from Enforced Disappearance, as well as investigations and necessary actions including the departmental actions against members of the security forces under investigation for those violations.<sup>6</sup> Similar orders are found in a number of subsequent cases, expanding the scope of reparation beyond simple compensation.

Building on this, several attempts have been made to enforce victims’ rights and provide them with various forms of reparation. The provincial governments have been willing to act to repair the damages caused to conflict victims, allocating resources for this matter. In some places, some work has been done to foster memorialisation. As reparation consists of different elements, memorialisations are considered to be important for victims’ satisfaction and

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<sup>6</sup> See Human Rights Watch, Nepal: Supreme Court Orders Action on ‘Disappearances’, 15 June 2007. Available at <https://www.hrw.org/news/2007/06/15/nepal-supreme-court-orders-action-disappearances>.

to contribute to non-repetition. This is notably the case in Rukum for instance where a number of gardens and memorials were erected by local groups using government-allocated funds to commemorate those lost during the conflict. Similar initiatives can be found in other districts.<sup>7</sup> Also, in some places, like in province 2, compensation was provided to victims, while in province 5 income generating activities were made accessible to victims' family members. A number of provinces, such as provinces 2, 5, and 6, have also drafted policies to facilitate the delivery of a reparation scheme.

Going through the different drafts, assessing some of the programmes that have been implemented so far, and having dialogues with the different stakeholders involved, such as the ministers, secretaries, provincial chief attorney, victims groups leaders, and different victims at the provincial level, Advocacy Forum has identified a number of issues to be addressed before moving ahead with different policies on this subject. This note thereby aims to help provincial governments draft their policies in a way that will not violate Nepal's international obligations, implement the jurisprudence of the Supreme Court, and ensure victims'

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<sup>7</sup> See International Center for Transitional Justice, NEPAL "We Cannot Forget" Truth and Memory in Post-Conflict Nepal. May 2017. Available at <https://www.ictj.org/sites/default/files/We%20Cannot%20Forget%20Book.pdf>.

satisfaction without undermining their efforts or creating tensions among them.

## **MAJOR POLICY RECOMMENDATIONS**

### **1) OVERARCHING NORMATIVE STANDARDS ARE REQUIRED**

Relief and reparation policies not prepared in consultations with victims and civil societies risk failing to address victims' needs and demands. Confirming this insight, victims have repeatedly criticized policies for not targeting their needs and expectations (notably in provinces 4 and 5). In the provinces where some resources are allocated (like in provinces 2, 4, 5, and 6), some policies or guidelines concerning relief and reparation have been drafted. However, these policies only concern specific categories of victims.<sup>8</sup> This was raised as a matter of concern by victims and CSOs and the provincial Governments in some provinces have amended the policy to include those victims of conflict.

In some provinces, victims have raised concerns arguing that their needs were different than the areas where the

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<sup>8</sup> The Madhesh Pradesh government provided interim relief for the victims of Madhesh Aandol. The policy at first did not include victims of conflict. See, 'Consultation Meeting on TJ process with the CSO and government agencies' at Janakpurdham, Madhesh Pradesh, 27 March 2022 organized by AF and ICJ.

resources were allocated.<sup>9</sup> Victims in some places have also alleged that the provincial governments might have drafted these policies to distribute money and benefits only to the victims close to the parties in power in the provincial government.<sup>10</sup>

Although different provinces are developing their policies, no coordination between them exists. This could result in different relief and reparation schemes for the same categories of victims, creating a feeling of discrimination and dissatisfaction among victims.<sup>11</sup> For example, if province 2 offers five hundred thousand rupees as relief for each family member that lost their loved one and provides them with pensions, while province 5 offers no money or less than five hundred thousand for the family members of those killed, it would create substantial discrimination among victims depending on their place of residency.

Coordination among the different provinces while developing such policies would therefore be strongly beneficial. In addition, provincial governments need technical expertise while developing directives and policies

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<sup>9</sup> Consultation in Lumbini Pradesh.

<sup>10</sup> See, ‘Consultation Meeting on TJ process with the Conflict Victims’ at Janakpurdham, Madhesh Pradesh, 27 March 2022 organized by AF and ICJ.

<sup>11</sup> See, Outcome of the ‘Consultation Meeting on TJ process with the CSO and government agencies’ at Janakpurdham, Madhesh Pradesh, 27 March 2022 organized by AF and ICJ.

on this issue. Most importantly, they require an overarching framework that would clarify the following basic elements: the definition of relief and reparation, the universe of victims, the registry of victims, the process through which policies are drafted, the agency responsible for maintaining the registry of the victims and the institution responsible to entertain grievances and address them if any dispute arises on a matter related to the right to reparation.

## **2) IMPROVE THE DEFINITION OF VICTIMS**

The definition of victims in the policy should not be too narrow to not exclude some victims who suffered from gross violations from gaining access to reparations. Furthermore, for the policy to be truly effective, it needs to define precisely who the victims benefitting from the policy are, as well as which gross violations make a victim eligible for reparations.

The definition of victims needs to be broadened to include those suffering harm (physical, psychological, sexual) directly and indirectly regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

There is no uniform definition of victims of gross violations of human rights in Nepalese law. Section 2(j) of the Crime Victim Protection Act 2018 classifies victims into three grades/categories: victim of first grade, victim of second grade, and family victim. The “victim of first grade”

is defined as a person who died or sustained damage as a direct result of an offense committed against him or her, irrespective of the perpetrator's lack of criminal liability on the ground of his or her age, mental unsoundness, diplomatic immunity, position or whether the identity of the perpetrator remains untraced, and regardless of whether a charge was brought against the perpetrator, if the case related to the offense was withdrawn, the sentence imposed on the offender was pardoned or if the perpetrator has not been convicted for the offense. It is also irrespective of the family relation of the perpetrator with the victim. This also includes a person who has not been involved in the offense but has died or sustained damage in any of the following circumstances: (1) while preventing the person who is committing the offense from committing it; (2) while extending reasonable support and rescuing with the purpose of saving any person where an offense is being committed against such a person; and (3) while trying to arrest the person who is committing or has committed the offense or extending support to the competent authority in the course of arresting the suspect, accused or offender.<sup>12</sup>

Section 2(f) of the Act defines a “victim of second grade” as a person that has not been involved in the offense that has been committed or is being committed against a victim of first grade but who has to bear damage for being an eyewitness of

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<sup>12</sup> See Crime Victim Protection Act 2018, s 2(h).

such offense. This expression also includes the guardian of a minor victim of first grade who has not been involved in the offense but who has to bear damage for having information about it or for being an eyewitness, as well as any of the following persons who have to bear damage for having knowledge as to the offense committed against the victim of first grade: (1) guardian of the victim of first grade; (2) where the victim of first grade is a minor; and (3) where the person who has to bear such damage is not involved in the offense.<sup>13</sup>

Furthermore, section 2(i) provides that the victim's mother, father, or spouse living in the undivided family of the victim or other member of the undivided family dependent on the victim, who is not involved in the offense against the victim of first grade who has died as a direct result of the offense is considered a "family victim".<sup>14</sup>

Although it is not clear in the Crime Victim Protection Act how the different grades would impact the victim's right to reparation, it provides a wider understanding of victims including those victimized directly or indirectly. Although it may be found to be narrow in the context of TJ where a community as a whole might have suffered harm in the context of the conflict, it recognises victimhood irrespective of the identification of perpetrators and their prosecution.

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<sup>13</sup> See Crime Victim Protection Act 2018, s 2(f).

<sup>14</sup> See Crime Victim Protection Act 2018, s 2 (i).

The Commission of Inquiry on Enforced Disappearance, Truth and Reconciliation Act (TRC Act) is the only legislation defining victims of gross violations. Section 2(h) of the Act defines victims as people who died or suffered harm in the form of physical, mental, or sexual violation or incurred financial loss and damage, detainment, or harm to family as a result of gross violations of human rights in the course of the armed conflict. It further provides that this term includes the community which sustained severe adverse humanitarian impacts as a result of gross violations of human rights.<sup>15</sup>

This definition of victims, applicable in the context of transitional justice, is relatively broad. However, international law's definition of victims includes those suffering harm both directly and indirectly. More precisely, it defines victims as persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law or serious violations of international humanitarian law. It further provides that the term "victim" can include the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress

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<sup>15</sup> See The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071, 2014, s2(h).



or to prevent victimization.<sup>16</sup> Thus, the definition in the TRC Act also falls short in reaching out to a broad spectrum of victims suffering harm during the conflict. Accordingly, it is important to include a clear definition of victims of gross violations entitled to receive reparation that would recognise one as a victim “*regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim*”.<sup>17</sup> This is particularly important while designing reparations policies.

### **3) A CENTRAL REGISTRY OF VICTIMS IS REQUIRED**

One of the issues that have been undermining the Government’s efforts to provide interim relief and reparation is the absence

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<sup>16</sup> See UNGA, ‘Resolution adopted by the General Assembly on 16 December 2005 [on the report of the Third Committee (A/60/509/Add.1)] 60/147. 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’ (21 March 2006) UN Doc A/RES/60/147, s V (8).

<sup>17</sup> See UNGA, ‘Resolution adopted by the General Assembly on 16 December 2005 [on the report of the Third Committee (A/60/509/Add.1)] 60/147. 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’ (21 March 2006) UN Doc A/RES/60/147, s V (9).

of a registry of victims, determining who the victims are (the list) and how they were identified (the process).

There have been allegations of non-victims receiving interim relief while real victims have been excluded.<sup>18</sup> Not having a central registry of victims can allow political parties to prioritize victims close to the parties in government for relief and compensation rather than the ones needing aid the most. In the past, the Local Peace Committees (LPC) had a list of victims. However, not all victims were registered by them. Several NGOs might have a list of victims, as well as the National Human Rights Commission as it also has the mandate to recommend compensation for victims. The Ministry for Peace and Reconstructions which existed until 2018 also had a list. However, these different actors and their registers were neither consolidated nor coordinated. No efforts have been made to designate a single Government institution centralizing a consolidated list of victims, which is essential to implement relief and reparation programmes (especially in regard to the types of reparation needed, the number of beneficiaries, as well as the timing and required staffing and budget of the different programmes). By including geographical data, registries can also help identify areas where collective reparation could be put in place and

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<sup>18</sup> See Advocacy Forum Nepal, *Discrimination and Irregularities, The Painful Tale of Interim Relief in Nepal*. 2010. Available at [http://www.advocacyforum.org/downloads/pdf/publications/Discriminations\\_and\\_Irregularities\\_A\\_painful\\_tale\\_of\\_Interim\\_Relief\\_in\\_Nepal.pdf](http://www.advocacyforum.org/downloads/pdf/publications/Discriminations_and_Irregularities_A_painful_tale_of_Interim_Relief_in_Nepal.pdf)

how provincial governments could be mobilized. The Truth and Reconciliation Commission could be in charge of this registry but to date, it has also not been working towards this goal, a part of why it has lost its legitimacy.

*An interesting example embodying the importance of central registries is Peru. The country developed a central registry of victims to provide reparation in the course of its transitional justice process. The Central Registry for Victims (RUV) aims to identify victims who suffer individually, as a group or as a community, and who have the right to receive reparation. It includes both individual and collective claims and is administered by the Council of Reparation, one of the transitional justice bodies in Peru. The Peruvian RUV also provides for the privacy of records if victims desire so, and guarantees the confidentiality of their data. Without these essential guarantees, some victims may be afraid of retaliation and could be deterred from providing their identities, which would then lead them to be deprived of any kind of reparation. By 2019, 224,336 victims had been registered in the individual registry, and about 8,505 had been registered in the collective one. Multiple programs aimed at bringing reconciliation through individual and collective reparations measures were designed on the basis of the RUV data.*

#### **4) BROADEN THE DEFINITION OF REPARATION**

Some of the drafts under consideration by the provincial governments have a narrow definition of reparation. Some consider reparation as similar to interim relief. Doing so, the definition proposed fails to encompass all the types of reparations victims are entitled to.

As set out above, international law defines reparation as the process and result of remedying the damage or harm caused by an unlawful act. It includes numerous dimensions: (1) compensation for any economically assessable damage; (2) restitution to restore the victim's original situation before the gross violation occurred; (3) rehabilitation including medical and psychological care as well as access to legal and social services; (4) satisfaction including the cessation of continuing violations, the full and public disclosure of the truth with an acknowledgement of the facts and acceptance of responsibility, the search for the whereabouts of the disappeared, the official restoration of victims' dignity, as well as judicial and administrative sanctions against persons liable for the violations and the inclusion of an accurate account of the violations that occurred in educational material at all levels; and finally (5) guarantees of non-repetition through the effective civilian control of military and security forces, the strengthening of the independence of the judiciary, as well as the promotion of international human rights standards and

of mechanisms for preventing and monitoring social conflicts and their resolution to all sectors of society.<sup>19</sup>

It is therefore required to widen the understanding of reparation in Nepalese law to include compensation, but also restitution, rehabilitation, satisfaction and guarantees of non-repetition. In this framework, combining compensation with livelihood, medical and psychosocial support, as well as elements of acknowledgment and memorialization would help ensure the long-lasting impact of reparations.

## **5) RECOGNIZE REPARATION AS VICTIMS' RIGHTS**

Through the development of human rights jurisprudence, victims' rights to reparation<sup>20</sup> and the State's obligation

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<sup>19</sup> See UNGA, 'Resolution adopted by the General Assembly on 16 December 2005 [on the report of the Third Committee (A/60/509/Add.1)] 60/147. 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' (21 March 2006) UN Doc A/RES/60/147, s IX.

<sup>20</sup> See the landmark judgment by the Permanent Court of Justice (PCIJ) in the Chorzow Factory case played a significant role in recognizing the victims' right to remedy and reparation and broadened the focus of the State's obligation towards individuals. The Court laid down the principle that ".reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed." in *Factory at Chorzow (Germany v. Poland) (Claim for Indemnity) (The Merits)* Permanent Court of International Justice (PCIJ) Series A No. 17,

to uphold that right are being recognized. The notion of ‘reparation’ recognizes that rights have been violated when the state failed to protect individuals and obligates the state to repair the consequences of this violation.<sup>21</sup> This jurisprudence has been elaborated by human rights bodies interpreting States’ obligation to provide an effective remedy.<sup>22</sup> States are ‘duty-bearers’ that must protect and respect the human rights of citizens, as well as ensure justice when abuse occurs. Thus, while developing laws, it is essential to consider international law that binds Nepal, as well as its developing jurisprudence. It is important to recognize that reparation is neither limited to compensation, nor a charity given by the State at its discretion. It is an obligation of the State and a right for victims who suffered gross violations, regardless of whether a perpetrator has been identified or convicted. Recognizing reparation as victims’ rights empowers them to assert their rights, recognizing them as rights holders and holding the State accountable.

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Judgment No. 13 (13 September 1928) para 125. Available at: [http://www.worldcourts.com/pcij/eng/decisions/1928.09.13\\_chorzow1.htm](http://www.worldcourts.com/pcij/eng/decisions/1928.09.13_chorzow1.htm).

<sup>21</sup> See Ruben Carranza, ‘Nepal. Relief, Reparations, and the Root Causes of Conflict in Nepal’ (2012), International Center for Transitional Justice. Available at: [https://nepalconflictreport.ohchr.org/files/docs/2012-10-00\\_report\\_ictj\\_eng.pdf](https://nepalconflictreport.ohchr.org/files/docs/2012-10-00_report_ictj_eng.pdf).

<sup>22</sup> See Human Rights Committee, *Celis Laureano v. Peru*, Communication No 540/1993, UN Doc CCPR/C/56/D/540/1993, 25 March 1996 ; IACtHR. *Castillo-Páez v. Peru (Merits)*, IACtHR Series C No. 34, 3 November 1997.

An important aspect that needs to be highlighted while recognizing reparation as victims' rights is the necessity to have institutional arrangements for victims to utilize to register complaints if a grievance arises or if reparation is denied. Some victims might be disregarded or forgotten during the attribution of reparations. The absence of a mechanism allowing them to argue their case prevents them from enjoying their right to a proper remedy and accessing the support they might need. This could be done either by giving power to the courts or by creating some other administrative institutional arrangements to assess the validity of grievances. The lack of mechanisms allowing victims to complain if they are not provided reparation must be fixed to ensure their right to remedy. In this continuity, drafts of some provinces, such as the one from Karnali province, include a welcomed proposal of establishing a peace and rehabilitation centre inviting officials from different ministry offices and conflict victims. However, its mandate and work to respond to grievances remain unclear.

## **6) RECOGNIZE INDIVIDUAL AND COLLECTIVE REPARATION**

Especially in the context of countries emerging from conflict, it is important to recognize both individual and collective reparative needs of victims. It is critical to offer basic socio-economic needs like education, medical treatment (including physical or psychosocial counseling), and direct

financial assistance to victims, while also recognizing and acknowledging victims, their sufferings and offering public apology, memorialization, restoration of dignity and honor, as well as guarantees of non-repetition.<sup>23</sup> Collective reparations could materialize through activities aimed at benefiting not only the victims, but also the communities to foster the reconstruction of the social fabric and repair trust in institutions.

Many victims have raised the need to create employment, implement quotas in public/private services, concessions or social security allowance, ensure skills training, provide loans without collateral for business development and offer shares to conflict-affected communities when building infrastructure and hydropower developments.<sup>24</sup> Some of these demands seem to be reflected in a few of the bills drafted by the provincial governments.

Different kinds of reparative programmes have also already been considered at the policy level. An example of this is the inclusion of various programmes in the TRC Act. For example, the Act provides in section 2 (e) that “reparation” can imply compensation and facilities or concession to be

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<sup>23</sup> See Conflict Victims Common Platform. ‘Reparative Needs, Rights and Demands of Victims of the Armed Conflict in Nepal’, Advocacy Paper, 2018.

<sup>24</sup> See Conflict Victims Common Platform. ‘Reparative Needs, Rights and Demands of Victims of the Armed Conflict in Nepal’, Advocacy Paper, 2018.



provided to the victims. Developing this further, section 23 of the Act states that reparation can include compensation to the victim, as well as restitution, rehabilitation or any other appropriate arrangements. It further confers to the Commission the right to make a recommendation to the Government of Nepal to provide facility and concessions to the victim or any member of his or her family, especially regarding free education and medical treatment, skill-oriented training, loan facilities without interest or with concessionary interest, arrangement for settlement, facility of employment, and any other facility or concession the Commission deems appropriate. In addition, sections 24 and 25 states that, if it appears that any property of the victim was seized, the Commission must recommend the Government of Nepal to return that property to the concerned person, as well as identify the actual loss owing to the seizure of the property and recommend reasonable compensation to the victim. The Commission can also make recommendations to the Government of Nepal to take action against a person involved in the offense of gross violation of human rights.<sup>25</sup>

Along the same lines, victims demand the truth about the fate and whereabouts of the disappeared. They also wish to ensure seized properties are returned to their rightful owners

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<sup>25</sup> See the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071, 2014.

while compensation and reimbursement of expenses are provided for physical and mental harm.

*Looking abroad, it is possible to identify interesting frameworks of individual and collective reparations.*

*In Peru, for instance, the reparation framework plans for both individual and collective benefits. Civil rights' restitution, economic compensation, as well access to education and health care were considered as individual measures. On the other hand, assistance to regularize community property, capacity-building training, peace education and promotion of a culture of peace, infrastructure building, as well as support for the return and resettlement of people displaced, among others, were included as collective and community reparation. Moreover, symbolic reparations such as reconciliation gestures, as well as access to housing were envisioned to be directed at both individual or collective victims. At the same time as these measures were introduced, the prevailing amnesty slowly was replaced by investigations and criminal prosecutions.*

*Similarly, in Colombia, both individual and the collective needs for reparation were recognized in the peace accord. Individual reparations include land restitution, access to education and healthcare, access to housing, educational training, and financial payments to victims.*

*In addition, the country's Final Peace Agreement directly linked punishment with reparation to enhance opportunities for the latter. 'Special sanctions' were designed for perpetrators of gross human rights abuses that not only accept full responsibility for the crimes they committed but further agrees to contribute to collective reparations and development programmes in the areas most devastated by the conflict.*

Although victims have been calling for reparation and compensation, they also very clearly articulated that this cannot be a trade-off for retributive justice against those responsible for crimes.<sup>26</sup> As the provincial governments draft their policy on reparation, it should not be considered an alternative to the truth, justice, or other obligations of states following gross violations of human rights.

## **7) RECOGNIZE THE SPECIAL NEEDS OF SOME CATEGORIES OF VICTIMS**

Depending on the violations they suffered, every category of victims has different reparative needs. Policies on reparation must therefore take this into account to ensure victims can access the remedy they truly need. To correctly identify

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<sup>26</sup> See Sarah Fulton and Mandira Sharma , 'Raahat ki Aahat: Reparation in Post-Conflict Nepal' in Carla Ferstman and Mariana Goetz (eds), Reparations for Victims of Genocide, War Crimes and Crimes against Humanity (2nd edn, Brill-Nijhoff 2020) 742.

those needs and design effective policies, consultations with victims and stakeholders are essential.

In Nepal, among the categories of victims that must be subject to special attention are Conflict Related Sexual Violence (CRSV) victims, for instance. As they were excluded from the interim relief guidelines, and despite their inclusion in the TRC Act in 2014, to this day CRSV victims remain unable to access any form of remedy, support, or acknowledgment. Sexual and Gender-Based Violence (SGBV) is particularly traumatizing for victims. In addition, women often have a social stigma, leaving most of them to give up on obtaining justice. Gender-friendly consultation processes aiming at determining such victims' needs must therefore be established while an informed and sensitive reparation framework must be established. This would notably be possible by guaranteeing the confidentiality of cases, developing more gender-friendly legislation (by, for example, amending the Penal Code that prescribes a one-year statutory limitation for rape), acknowledging the existence of CRSV victims, designing specific rehabilitation programs with medical and psychological experts on SGBV, as well as developing more gender-sensitive truth-seeking, investigation and prosecution processes.

In a similar manner, particular attention must be paid to people with disabilities in light of their special needs. As disabled victims will never be able to know full restitution and return to their previous lives, they must be provided

additional benefits. In addition to medical treatment and psychosocial support, the reparative framework must consider the permanency of the disability and the types of loss to offer longer-term support.

## **8) RECOGNIZE A HOLISTIC NOTION OF REPARATION AND ITS TRANSFORMATIVE POTENTIAL**

Reparation can be designed to have transformative changes to address unequal treatment in society. The lack of institutional reform contributes to the perpetuation of continuous discrimination and the subjugation of victims. As a form of institutional reform, reparation could therefore transform society.

Impunity deprives victims of their right to truth, reparation, and justice. As people in power are seen to always be above the law, victims have a deep sense of inequality and feel betrayed. Reparation could be designed to play an important role in transforming society through the implementation of the principle of equal protection of the law and equity in society. It can also support institutional reform and restructuring to address the violations and discrimination of the past, which will in turn improve public confidence in the Government.<sup>27</sup>

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<sup>27</sup> See Mandira Sharma, 'The Complexities of Delivering Justice and Truth Simultaneously in Transitional Justice Processes with a Special Focus on Nepal' (DPhil thesis, University of Essex, 2020).

Political patronage has deep roots in Nepal and has affected institutional reform efforts. Independence, impartiality, and fair treatment of public institutions remain a constant demand of the population at large, both from victims and civil society. This also needs to be considered while designing reparation-related policies as one of the major obstacles to the reparation of human rights violations is the non-identification and lack of accountability of the individuals responsible for criminal actions, either through direct acts or through omissions. The officials personally responsible for gross violations of human rights breached public trust in the institution resulting in loss of trust from the victims and, often, from society at large. Therefore, reparation could be holistic and allow measures such as vetting to be adopted as a means of satisfaction.

Vetting corresponds to the process through which the integrity of individuals is assessed while determining if they are suitable to hold a public post.<sup>28</sup> It allows for background checks to see if individuals have been involved in the commission of any human rights violations.<sup>29</sup> This background check deters a person from being involved in the commission of human rights violations as there is the awareness that their involvement or ineptitude will

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<sup>28</sup> See United Nations Security Council (UNSC), ‘The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General’, UN Doc S/2004/616\*, 23 August 2004, para 52.

<sup>29</sup> See the International Center for Transitional Justice (ICTJ), Vetting. Available at: <https://www.ictj.org/our-work/research/vetting>.

be recorded, which could in turn come to affect their chances for career development. When vetting is in place, potential perpetrators are therefore hesitant and refrain from committing human rights violations. Apart from the deterrence effect, vetting also has a direct benefit for victims' satisfaction. Satisfaction derives not only from reparation adequacy but also from some kind of punishment. Vetting and the subsequent denial of career development for perpetrators acquire a punitive dimension, complementing prosecutions that can be long infructuous battles. In the context of Nepal, processes like vetting could be particularly useful to foster institutional reform and help build public trust in institutions. As a forward-looking process, provincial governments could therefore enact legislation making perpetrators against whom credible evidence exists unfit for public posts as a form of reparation for victims of gross violations of human rights.

## **9) DEVELOP A CLEAR VICTIM-CENTRIC AND CONSULTATIVE PROCESS**

Reparation, designed as a consultative process, offers great potential to identify victims' immediate needs and design the programmes that suit them the best, reinforcing their acceptability and satisfaction amongst victims. To ensure a clear victim-centric and consultative process, it is necessary to define what meaningful consultations with victims and civil society actors mean. Meaningful consultations require not only the representation and participation of

victims in discussions but also their meaningful influence on the reparations policy process from start to finish. This implies engaging victims with relevant capacity, diversity, and legitimacy to exert influence in every key decision of the design, implementation and evaluation of reparations processes, guaranteeing reparations are not designed for survivors but rather together with them.<sup>30</sup> Thus, local governments that are closer to individuals are better suited to develop a policy framework for meaningful consultations with victims in the design and implementation of reparation-related programmes.

***Interesting victim-centric and consultative processes can also be found abroad.***

***In Colombia, for instance, victims are placed at the center of the transitional justice process. The country's Special Jurisdiction for Peace (JEP) organized several events to explain to victims its operation, the opportunities for participation in its proceedings, the procedure to receive legal advice, as well as define the rights and the types of reparation individuals can be entitled to, among others. Meanwhile, members of the Judicial Panel for Acknowledgement of Truth, part of the JEP, have traveled***

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<sup>30</sup> See Global Fund for Conflict Related Sexual Violence, Policy Paper outlining the GSF survivor-centred reparations approach and co-creation model for survivors of conflict-related sexual violence.



*to different parts of the country to receive testimonies from the victims and advance the transitional justice process. Once trials start while testifying victims can propose some reparation measures to be included in sanctions against perpetrators, state their expectations about the JEP's proceedings and directly ask questions to perpetrators. They are also consulted if the Court considers ordering special sanctions (see above) that would reduce one's sentence against some form of community service. If some progress can be made, especially to allow victims' families and victims' organizations to participate more actively and to guarantee participation in all proceedings at all stages, the Colombian framework still provides key insights to foster an inclusive victim-centric and consultative transitional justice process.*

*In a similar manner, in South Africa, great emphasis was given to individuals' testimonies. More than 22,000 South Africans participated in the Truth and Reconciliation Commission statement-taking process, detailing the violations they suffered. These statements were later used as a basis for victim status and compensation payments. Around 2,000 people were also invited to testify about their experiences in public hearings held around the country while Court testimonies were broadcasted in most media while judicial proceedings were unfolding. As a*

*result, victims' voices were directly heard, placing them at the core of the transitional justice process.*

*In these two countries, victims were at the center of the transitional justice process. It is only by doing so that such a process can have effective results and truly help society heal.*

## **10) PRECISION OF REPARATION POLICY AND ITS IMPLEMENTATION REQUIRED**

To ensure the efficient implementation of a reparation policy, key factors must be precisely defined. First, the strategic objectives the policy seeks to achieve with the proposed reparations must be defined. This would help send a uniform message and would facilitate the achievement of the objectives of the reparations. Second, it is essential to clearly identify the agency responsible for the implementation of the policy to ensure its effective execution. It is also necessary to develop formal multi-stakeholder structures and coalitions specifically mandated to provide input and validate the various stages of the reparation process to guarantee they play a meaningful role and facilitate cooperation between the different groups. Third, to ensure the sustainability of the policy and fund the reparation effort, resources must be generated. It is thereby desirable to develop a precise plan to engender the necessary resources. Finally, adopting a clear plan detailing a time frame for the implementation of the

policy, its implementing agencies, and its different objectives would increase the efficiency of the implementation. It would also assist monitoring efforts.

## **11) DEVELOP A REPARATION FUND**

To ensure that reparation-related policies run fairly, the creation of a reparation fund is necessary. It would allow for a systematic approach to reparation irrespective of whether alleged perpetrators are able to pay compensation or not. However, the legal framework and procedure of functioning of such a fund need to be clarified to ensure its resources are not misappropriated or embezzled. The persons able to access it as well as the criteria of attribution must be clearly identified.

In a quite evident manner, the fund should only be used to serve victims. It could do so either directly when victims are granted monetary compensation and perpetrators cannot be identified or are unable to pay, or indirectly through the funding of projects with a reparative dimension. In the latter case, the organization soliciting the fund's resources must be subject to important monitoring and evaluation assessment. Priority should be given to grassroots initiatives that empower victims and communities to add a transformative dimension to the process in itself.

Resources for the mechanism could be provided by the State, but also by fines paid by perpetrators as part of their sentence ordered by courts or transitional justice

bodies. Former victims or their families could also be able to voluntarily participate in the fund. Moreover, benefits resulting from reparative projects funded through the mechanism could be returned to serve future projects and create a dynamic of self-sufficiency.

In this aspect, in 2018 the Nepal Government adopted the Crime Victim Relief Fund Regulations to provide relief and compensation to persons harmed by criminal offenses. Courts can order to provide relief to a crime victim using the fund. This is especially useful if the offender is not financially capable of paying the compensation or if he has yet to be identified. Once the order is passed by the court, the victim has to submit an application to receive the prescribed amount. On the other hand, the offender - if identified and able to pay - must pay the amount into the fund within 35 days of the verdict. A similar mechanism could be envisioned for conflict victims.

*Examples of funds aimed at victims within the framework of transitional justice are numerous. Among them, the most important one is the International Criminal Court (ICC) Trust Fund for Victims and their families. The fund was established by states parties to the Rome Statute in 2004 to raise funds necessary to comply with an order for reparation made by the Court if a convicted person does not have the sufficient resources to do so. It can also carry out projects aimed at assisting larger*

*groups of victims who may not have necessarily suffered directly from crimes prosecuted before the ICC. This second mandate mostly consists of collective reparations. Significantly, both victims and convicted individuals have the right to appeal an order for reparation. The ICC Appeals Chamber then rules on the order. To implement its mandate, the Fund relies on voluntary donations, money and other property collected through fines and forfeiture transferred to the Fund on the order of the ICC, as well as resources collected through awards for reparations.*

## **12) DESIGN A COORDINATED INTEGRATED PLAN**

Once all the recommendations made above are tackled and all the definitions are precise, it will be necessary for provincial and local governments to develop an integrated plan to effectively implement their reparation policies and programmes, and reach all victims with the proper remedies. This plan must be elaborated in coordination with each other and with the different agencies of the central governments to prevent asymmetries in the provision of reparations and ensure their adequacy.