

Across The Lines



the impact of nepal's conflict on women



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December 2010



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Foreword

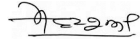
Advocacy Forum has been documenting cases of gender-based violence, including sexual violence, for several years. When the International Center for Transitional Justice (ICTJ) established an office in Nepal in 2007, it joined forces with Advocacy Forum to challenge the silence and indifference to justice for women.

The result is this report, “Across the Lines: The Impact of Nepal’s Conflict on Women.” The report’s findings and recommendations are based on discussions with men and women throughout Nepal, bringing their voices and experiences directly to the forefront. Their voices reveal that violence against women, before and during the conflict, as well as now, is tightly linked to an entrenched culture of impunity.

The barriers to challenging such a culture of impunity and remedying harm are legal, such as time limitations and evidentiary requirements; attitude, the stigma around sexual violence, which is re-victimising as opposed to healing; and physical, for example, access to legal aid and comprehensive health services. A further barrier is political will. This is an essential ingredient in this process of transition that should seek to fulfil the rights and aspirations of the women of Nepal.

We welcome the wide consultations that the government conducted to design and finalise the national plans of action on human rights and on Security Council resolutions 1325 and 1820. Failure to implement these plans will only lead to a

further decrease in confidence in the government. Civil society has a lot to offer and the government should use this opportunity to continue to consult and collaborate, particularly around monitoring progress. We hope that the recommendations offered in this report will help guide such future collaboration.



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Acknowledgements

This report is a product of a concerted team effort. Jyotsna Poudyal, of Advocacy Forum and Carla Fajardo of ICTJ, led research conceptualization and design. Together they coordinated the study team and also undertook the research in the field. Seira Tamang and Dr. Chandra Bhadra assisted in the questionnaire design. Aya Fujimura-Fanselow, Jyotsna Poudyal, Prabindra Shakya, Sophie Hodgson, Carla Fajardo, Dhiraj Kumar Pokhrel and Aastha Dahal wrote different chapters of the report.

Special thanks to Ingrid Massage who reviewed and edited the chapters and to Tessa Hausner who assisted in the process. Additional editing of the report was undertaken by Elana Dallas.

The interviewers and focus-group facilitators who undertook their work in challenging circumstances were indispensable contributors to the process. Members include Bishnumaya Bhusal, Rajesh Sharma, Rekha Kusum Regmi, Ambika Rai, Yuvaraj Bom, Prem Dawadi, Laxmi Shresha, Pitambar Koirala, Durga BK, Madhusudan Dawadi, Upasana Shakya, Kiran Gupta, Kiran Kumari Shah, Poonam Chand, Danu Kumari Chaudari and Sabitra Pant. A dedicated team of Advocacy Forum and ICTJ, especially Abha Shrestha, provided invaluable support to the research. Other members include Chetana Sharma, Prakash Pokhrel, Ruth Hugo and Shova KC. The research team extends its gratitude to the staff of Advocacy Forum in various districts for their invaluable support in establishing contacts with victims and their families on behalf of the research team.

Acknowledgements

The team extends its gratitude to all the Chief District Officers, police officers, journalists, human rights activists, lawyers, health officials, teachers, community and religious leaders, community organisations, including many women's groups and members of political parties, and male members of the community for participating in the discussions and sharing their valuable analysis and experiences. They are too numerous to be named here, but their input was essential.

Above all, we are indebted to all the women and girls who kindly shared their experiences and knowledge. Without their support, this research would have not been possible. We hope that this report honestly represents their voices which are often forgotten in the peace and transitional justice discourse.

Finally, we would like to thank the Open Society Institute, which made the study possible.

Glossary

AF	Advocacy Forum – Nepal
CA	Constituent Assembly
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CPA	Comprehensive Peace Agreement
CPN-M	Communist Party of Nepal-Maoist
CRC	Convention on the Rights of the Child
FGD	Focus Group Discussion
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTJ	International Center for Transitional Justice
IDI	In-depth Interview
KII	Key Informant Interview
NHRC	National Human Rights Commission
NP	Nepal Police
PLA	People’s Liberation Army
RNA	Royal Nepal Army

SPA	Seven-Party Alliance
TRC	Truth and Reconciliation Commission
UN Basic Principles	UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
UNMIN	United Nations Mission in Nepal

Executive Summary

Gender-based violence, including sexual violence was a common feature of the 10-year-long armed conflict between the security forces and the Communist Party of Nepal – Maoist (CPN-M), yet few individual incidents were reported. Human rights activists, journalists and international observers paid very little attention to gender-based violence directed at women and girls.

This invisibility has continued since the end of conflict. Nepal is living in an uneasy peace with many of the reforms agreed in the Comprehensive Peace Agreement (CPA) of November 2006 still to be implemented. Little has been done to ensure that women and girl victims and survivors have access to effective reparations which address their continuing suffering and help them to rebuild their lives. Women and girls are largely absent from a number of “interim relief” programmes initiated by the state since the end of the conflict. None of the government relief programmes and compensation schemes includes assistance for victims of sexual violence, and some of these existing schemes discriminate against certain categories of women.

During the “people’s war”, women played a crucial role as social and political activists. However, women’s participation in peace negotiations held in 2005 and in the ongoing talks since has been negligible. Women combatants have also been sidelined from the discussions of the rehabilitation and integration process of combatants. Despite the significant numbers of women combatants in the Maoist army, known as the People’s Liberation Army (PLA), the government technical

committee mandated to look into the issue of reintegration of the Maoist combatants did not include a single female member. All this speaks volumes on how women in Nepal continue to be neglected and marginalised, despite some government efforts to address discrimination, inequality and gender-based violence.

During the conflict, women were detained, tortured, raped and killed for suspected association with the Maoists, and also for belonging to the families of security forces personnel. The wives, mothers and daughters of men who were displaced, killed, disappeared or tortured, suffered greatly as a result of the conflict. They had to carry economic and social responsibilities, acting as both breadwinners and care-givers, and defending their families. Some were also active as combatants.

Despite the end of conflict in 2006, neither the state nor the Maoists have publicly apologised to the many survivors of rape and sexual violence. In the CPA, both parties to the conflict promised to form a high-level Truth and Reconciliation Commission (TRC), a Disappearances Commission and a National Peace and Rehabilitation Commission. To date, none of these has been established.

This report by Advocacy Forum – Nepal (AF), in collaboration with the International Center for Transitional Justice (ICTJ) – Nepal, documents women’s experiences of conflict in Nepal. It explores not only the various abuses women suffered, but also the many roles they played during the conflict and how their lives have changed as a result.

The report examines the situation of women and girls during the conflict, finding that women’s lives were changed in ways that were often traumatic but sometimes liberating. It goes on to expose the hidden story of sexual violence during the conflict, using the voices of women to describe the widespread incidence of rape and other abuses by the security forces and violations committed by the CPN-M. The research examines the impact of conflict-related violence on women’s lives, and, in particular, on their health. Looking forward, the study reveals the lack of women’s participation in the peace process and their limited inclusion in post-conflict governance. It explores the obstacles facing women in their search for truth, justice and reparations and sets out their opinions on how to move forward.

The report concludes that immediate strategies are needed to improve conditions for women affected by the conflict and to prepare the ground for justice and sustainable peace. In this regard, the report makes a number of recommendations to the Government of Nepal, Communist Party of Nepal–Maoist, the Constituent Assembly, the Judiciary, the Police and Attorney General’s Office, the National Human Rights Commission, the National Women’s Commission, National Dalit Commission, the National Planning Commission, civil society, the media, donors, and the United Nations. While perhaps unorthodox, recommendations are also made to the future, and much-needed, transitional justice mechanisms, specifically the Truth and Reconciliation Commission and the Disappearances Commission. Among the recommendations, several themes emerge, including the need for:

- Legislative reform that repeals all discriminatory legislation, criminalises disappearances, torture, including sexual and gender-based violence, amends the rape law to remove the time-limit on filing complaints, establishes a victim and witness protection system, and ensures that legal aid is available and accessible.
- Investigation and prosecution of crimes committed against women, including crimes of sexual violence, and ensuring that all actors cooperate in such investigations.
- The establishment of gender-sensitive structures in the criminal justice system, including gender focal points in police stations, special units to investigate cases of gender-based violence, training of police and prosecutors on how to address sexual violence cases and increasing effective recruitment of trained female personnel for service in the different sectors of criminal justice.
- A specific focus, including allocation of resources, on ensuring gender-sensitive policies and procedures are included in the substantive work as well as staffing and practice of all active commissions, as well as future commissions, such as the Truth and Reconciliation Commission and Disappearances Commission.
- Improving access to health care, particularly the community level, through free, or at least affordable services, specific to the needs of female conflict victims.

- An inclusive reparations programme that includes female conflict victims in its design, implementation, monitoring and evaluation.
- Reporting back to victims the results of research and surveys of which they have been the subject, and consulting on possible future initiatives.
- Creating a conducive environment for survivors of sexual violence to share their experiences and express their needs.

1

Methodology

This report is an output of a collaborative study undertaken by Advocacy Forum – Nepal and ICTJ – Nepal. It was undertaken after consultation with the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) and national women’s rights organisations. The objective of the study is to try to understand the impact of the armed conflict on women in Nepal and to suggest strategies to assist women affected by conflict and their communities. The process listened to the voices of women, and sought to document their experiences and opinions on how the conflict affected their lives, how they coped with the situation at the time and after the conflict ended and to identify their present needs and demands. The study also sought to document sexual violence women suffered during the conflict.

Specific objectives of the research

- To understand and analyse the conflict experiences of women from different communities and backgrounds in Nepal and identify the impact of the armed conflict on their economic, social, cultural, civil and political rights and what specific challenges and obstacles women continue to face.
- To examine the types of sexual violence that women suffered during the war, understand the experiences of the victims and survivors, and identify the barriers they face in gaining access to different types of remedies.

- To provide recommendations on priority areas to assist women affected by conflict, suggesting possible remedies and development strategies that build on local strengths and solutions.
- To help advocate for the inclusion of women's experiences, voices and concerns in the transitional justice, national peace and development process.

Methodology

The project used participatory methods to bring out the voices of women from different communities, particularly women affected by the armed conflict. The research sought to build on their experiences, perceptions and knowledge. Information was collected through a combination of interviews with government agencies and other stakeholders at the national level, focus group discussions (FGDs) at the community level and interviews with key informants and survivors of human rights violations in 16 districts in Nepal.

The aim was to collect meaningful qualitative data revealing the different ways in which the conflict impacted upon the realization of the full range of women's human rights in Nepal. While the research sought to understand the occurrence and pattern of sexual violence, the research was primarily conceived as a pilot and qualitative study. This study does not therefore provide a quantitative assessment of the scale of sexual violence during the conflict.

Research design

Selection of research areas

Research was conducted in all five of the country's development regions and sites were selected after consultations with various organisations working on conflict and women. Sixteen districts were selected on the basis of the degree of violence (past and ongoing), the presence and influence of Maoists and the government security forces, the availability of support structures for the survivors, and the presence of victims' and women's groups. Given that the research dealt with the sensitive topic of sexual violence, the selection of districts was also guided by the availability of support structures for victims of such violence. The selected districts represented the different terrain and demographic and ethnographic profiles of Nepal. They were: Kailali, Dadheldhura, Accham, Bardiya, Kalikot, Rolpa, Dhansha,

Dolakha, Makwanpur, Morang, Siraha, Saptari, Okhaldhunga, Baglung, Palpa and Kapilvastu.

Target respondents

Target respondents were selected to ensure the maximum representation of women and men from different castes and ethnic backgrounds in remote communities who suffered disproportionately during the conflict. The study also targeted women with few financial resources and women from vulnerable and marginalised castes or ethnic backgrounds.

The study initially conducted desk research reviewing the districts for its most “disadvantaged” groups in terms of socio-economic indicators, their access to services, including to the formal justice system (geographical location and proximity to the district headquarters was one criterion). Once in an individual district, the researchers sought local insights about who are considered most marginalised or economically and socially disadvantaged in the district. In other words, a deliberate and targeted effort to reach out to people was made instead of going to easily accessible places. As internally displaced women face unique problems due to their status, in every district a group of female internally displaced persons (IDPs) was identified.

The research team ensured adequate representation of respondents from: poor, vulnerable and disadvantaged communities, such as Madhesi, Dalits, indigenous people, landless people, bonded labourers, internally displaced people; from different public service providers, such as health professionals, Village Development Committee (VDC) Secretaries, Chief District Officers, Local Development Officers; from justice sector representatives, such as judges, lawyers, public prosecutors; and from community leaders, civil society members, and representatives of international and national human rights and development organisations.

Field research

The research lasted one year and the fieldwork was carried out from January 2009 to June 2009 by a team of 15 researchers with the overall guidance of the project coordinators from AF and ICTJ. The length of the field trips varied from 12 days to 20 days.

Fieldwork was carried out in two phases. Pilot research was conducted from February to March in five districts to test the research methodology. A two-day workshop was also held to review and adapt the research tools. Then the second phase of the research took place.

Research tools

The project used the following research tools to collect primary data:

- Focus group discussions
- Qualitative in-depth interviews using questionnaires
- Site observation
- Informal sessions

In total, 97 FGDs were organised – 62 of which were with females only, 30 with males only, the remaining five with mixed groups. While marginalised community members were also included in the general FGDs, 28 of the FGDs were conducted exclusively with them. A total of 88 victims were interviewed in depth. Researchers also conducted 229 interviews with key informants. Access to participants was facilitated through community leaders, NGOs and victims' groups. Separate questionnaires were developed for interviews with women, men, girls, internally displaced persons, marginalised groups and minorities.

As an integral component of the study, the research team also conducted a desk review of relevant laws and regulations, statistics of women affected by an armed conflict, selected literature examining the impact of conflict on women in Nepal and in other countries affected by the conflict. The team reviewed articles, reports and case studies documented by women's organisations, such as Women for Human Rights, Single Women Group, Women Rehabilitation Centre (WOREC) and Saathi, as well as the annual reports of the National Human Rights Commission (NHRC).

Focus group discussions

FGDs were held with both women and men at district and village levels. Men were interviewed to understand their perspectives on the impact of the conflict on women. The FGDs with women focused on the general impact of conflict on women

and instances of sexual violence during the conflict. Great care was taken to avoid discussion of individual cases of sexual violence. The group discussions helped to understand what kinds of services were currently available to women, and what should be made available to them to address their physical and psychosocial needs.

Interviews with key informants

Basic interviews and additional in-depth interviews were held with key informants, including those who had witnessed or experienced violations of women's human rights during the conflict period such as survivors and their family members. Key informants also included health professionals, VDC Secretaries, Chief District Officers, Local Development Officers, community leaders, civil society members, representatives of international and national human rights organisations and justice sector representatives, such as legal aid providers and judges.

When the research team identified women who were willing to share their individual stories, they conducted separate interviews and, whenever possible, referred them to service providers. Some victims of sexual violence approached the researchers and expressed their willingness to recount their stories. Researchers did their best to ensure that these women were interviewed in safe conditions, felt comfortable speaking about their experiences and fully understood the purpose of the interviews. Female lawyers with past experience in interviewing victims of sexual violence conducted the interviews. Prior to the field research, they were given further training in conducting interviews with victims of sexual violence by AF and ICTJ. Female lawyers also provided free legal counseling if the victims wanted to pursue legal avenues.

Composition of the research team

The objective of the research was to understand women's experiences of the conflict, using a multidisciplinary approach that included anthropological and other perspectives and not merely a legal outlook. The research team members were selected to allow this multidisciplinary perspective.

A total of 15 researchers were hired for the research. Each team consisted of four or five researchers: one with research experience on human rights issues related to the armed conflict; one female lawyer with experience in working on sexual violence; one team leader with experience of leading a research team; one social

researcher with experience of working at the grassroots level with disadvantaged communities and with good gender knowledge; and one or two facilitators with knowledge of the local language and area.

The members of the research team were selected by AF and ICTJ. They worked under the guidance of AF and ICTJ project coordinators who helped the team to design the research framework and tools as well as to analyse data.

Technical and operational aspects of the research were carried out by five research teams under the overall guidance of the AF project coordinator with assistance from ICTJ staff. The project coordinators of AF and ICTJ staff visited several research sites to guide and monitor the research teams.

Data processing

The information collected from the field through FGDs, in-depth and key informant interviews were transcribed in Nepali and then translated into English. Some interviews were recorded, depending on whether the subjects felt comfortable with this, and then these recordings were also transcribed into Nepali and then English. The transcriptions were then entered in the qualitative data analysis software Atlas.ti where the data was grouped and classified to enable research analysis.

Research limitations

The research process faced a number of limitations, and the study's findings should be considered illustrative rather than comprehensive and representative. Research limitations included:

- The research is primarily conceived as a pilot qualitative study and does not aim to provide a definitive assessment of the scale of sexual violence during the conflict.
- The selection of districts was also guided by considerations of availability of networks, services for the victims of human rights violations and the possibility of gaining people's trust.
- The selection of disadvantaged groups was limited to three or four groups per district.

- Despite the efforts of the researchers to refer victims of human rights violations to service providers, this was often not possible due to lack of services.
- The mobility of researchers was restricted due to strikes; sometimes people had to be brought to district headquarters to be interviewed, which was also sometimes necessary for the interviewees' sense of security.
- During a restricted visit to two cantonments, it was not possible to gather in-depth information on the experiences of female combatants as they seemed uncomfortable sharing their experiences and information.
- The findings in this report represent only the researchers' analysis of data; they have not been discussed with government and civil society partners.

2

The situation of women and girls during the conflict

One must be cautious when describing a society as diverse as Nepal's, composed as it is of a myriad of caste and ethnic groups, each with their own socio-cultural traditions, albeit Hinduism being the dominant religion. Hinduism is deeply patriarchal, which affects the way women are treated in society. As encapsulated within a verse of the *Ram Charit Manas*¹ that proclaims “drums, idiots, outcasts and women are fit only for beating”, women and girls have long been perceived as inferior to men and subject to discrimination on multiple levels.² The value attached to ideals of ritual purity amongst Hindus, and particularly to women's chastity, is manifest through a number of cultural practices including early marriage, dowry, *chaupadi*,³ and the stigmatisation of widowhood.⁴

Traditionally, most Nepali women and girls have been restricted to the domestic sphere, and as such, are often denied access to education, economic independence, political participation and even adequate healthcare.⁵ Although levels of literacy,

¹ An epic 16th century Hindu poem composed by the poet Goswami Tulsidas that chronicles the life of Ram, who is worshipped as an incarnation of the God Vishnu.

² Forum for Women, Law and Development, A Study on Discriminatory Laws against Women, Dalit, Ethnic Community, Religious Minority and Persons with Disabilities, Publication No. 142 (2009), p. 21.

³ In some parts of Nepal, the practice of excluding women from their homes and forcing them to live in a cowshed or other outhouse for the duration of their cycle is still practiced.

⁴ Not only women whose husbands have died suffer this stigmatisation, but also those whose husbands who have been forcibly disappeared or left the country in search of economic opportunities.

⁵ This is less true of women from some janajati ethnic groups, who traditionally enjoy greater rights with equal or more access and control of resources, relatively high social mobility and freedom within the private sphere. However, Hindu women from higher castes tend to have less autonomy within the private sphere. Supra note 2, at 20.

fertility and life expectancy vary enormously and are heavily influenced by economic status and location (urban/rural), in general overall rates of key development indicators such as literacy are significantly lower for women than men. According to UNDP's 2009 Human Development Report, the female literacy rate among those aged 15 and above as of 2009 was 54.5 per cent compared to 81 per cent for men.⁶

Women's participation in political life historically has been minimal. In 1990, during the first *Jana Andolan* (People's Movement), which ended the *Panchayat* (partyless) system that had been in place since the 1950s, women were not very prominent. The end of the *Panchayat* system and the introduction of a multi-party democratic political system did little to eliminate the networks, habits, and structures of discrimination and exclusion that had been so essential to the *Panchayat* regime's survival. Nor did the post-1990 governments eliminate patronage or the almost exclusive focus on Kathmandu, ignoring the rural areas. This is not to say that the notion of gender equality is completely absent in Nepal, and a number of organisations have been very active in their advocacy of women's rights over the past 50 years. Gradually their impact is becoming visible, arguably accelerated by the "people's war". For example, many more women participated in the demonstrations, some in leadership roles, during the *Jana Andolan* of 2006 compared to that of 1990.

When the CPA was negotiated, the parties recommitted to Nepal's international law obligations to eradicate discrimination against women, as well as discrimination based on class, ethnicity, language, culture, religion and region. The agreement also stated specifically that the parties would provide special protection to the rights of women and take immediate action to prevent violence against women.⁷

⁶ Nepal Human Development Report 2009, State Transformation and Human Development, <http://www.undp.org.np/publication/html/nhdr2009/nhdr2009.pdf>.

⁷ See Human Rights, Fundamental Rights and Adherence to Humanitarian Law, part 7 of the CPA, Women and Child Rights, art. 7.6.1. "Both sides fully agree to protect the rights of the women and children in a special way, to immediately stop all types of violence against women and children, including child labour as well as sexual exploitation and abuse."

Changes in domestic legislation since the CPA have meant that, in theory at least, women have the same rights as men under domestic law.⁸ Women's rights activists, including politicians, also played a fundamental role in pushing for legal provisions to secure more equal representation of women within local and national political mechanisms. However, women in Nepal remain seriously under-represented in every category of the UNDP gender empowerment measure (which includes the percentage of women as legislators, senior officials, managers, and serving in ministerial positions).⁹

Brief history of the conflict

In November 1995, before the Maoists declared the "people's war," the Nepal government launched Operation Romeo in Rolpa district, the Maoist heartland. Thousands of Nepal Police (NP) were deployed for the operation, during which time they committed gross violations of human rights. Many human rights organisations, including Human Rights Watch and Amnesty International, reported that Operation Romeo resulted in the arbitrary arrest and detention of hundreds of members of left-of-centre parties, rape, executions and disappearances.¹⁰ Many women directly or indirectly affected subsequently became members or supporters of the CPN-M.

Between 1996 and 2001, almost every government (of which there were eight) responded to the Maoist uprising through police oppression. By the end of December 2000, the conflict had claimed the lives of significant numbers of people. The victims included Maoist cadres and their family members, police, alleged police informers, local leaders and cadres of mainstream political parties and civilians. Police brutality, rather than quelling the rebellion, served to fuel the conflict. Many witnesses of human rights violations also became radicalised. Innocent victims and disillusioned youths were either coerced into or willingly joined the Maoist fold. Along with their male counterparts, women also actively participated in the movement.

⁸ See Chapter 5 (detailing discriminatory laws).

⁹ As of 2009, Nepal ranks 83rd out of 109 countries in the gender empowerment measure. See http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_NPL.html.

¹⁰ Human Rights Watch, "Between a Rock and a Hard Place," 6 October 2004; See also Amnesty International, "Human Rights Violations in the context of a Maoist People's War", December 1997, for a detailed discussion of the human rights abuses committed during Operation Romeo. A similar operation called Kilo Sierra II was launched in May 1998 against Maoist insurgents in the districts most affected by the Maoist "People's War."

After the Royal Nepal Army (RNA) was deployed to fight the Maoists in November 2001, the conflict escalated. The army launched a number of successful raids against CPN-M camps. In addition, in the context of what was denominated as a “global war on terror” after the attacks in New York on 11 September 2001, the Nepali government branded the Maoists as “terrorists” and succeeded in gaining support for a military solution from the United States and India. As the conflict escalated after 2001, there were large-scale armed attacks by the CPN-M, during which women participated in substantial numbers, as reported by the witnesses of such attacks and the media.

The end of the conflict, in a somewhat bizarre twist, was brought about after the King took power in a full-fledged coup on 1 February 2005. Within days, 3,284 individuals, including leaders of mainstream political parties, human rights defenders and journalists, were either arbitrarily arrested and detained or put under house arrest.¹¹ At least 599 civilians were killed either by the security forces or the Maoists, within 100 days of the royal takeover.¹² This drove the mainstream political parties and the CPN-M to negotiations, which took place in New Delhi, India.

On 22 November 2005, the Seven Party Alliance (SPA) signed a 12-point “Letter of Understanding” with the CPN-M, including a call for an “end to autocratic monarchy” and the election of a Constituent Assembly (CA). The “Understanding” committed the CPN-M to multi-party democracy, human rights and the rule of law, and stated that the armed Maoist force and RNA would be kept “under the supervision of the United Nations or any other reliable international supervision” during CA elections. There were no women visibly involved in the negotiations, nor were any gender-specific issues included in the agreement.

After the *Jana Andolan* of April 2006 and the reinstatement of parliament by the King, a new government was formed by the SPA. The CPA was signed by the SPA government and the CPN-M on 21 November 2006.

¹¹ “Nepal One Hundred Days after Royal Takeover and Human Rights Crisis Deepens February 1– May 11, 2005,” Forum Asia.

¹² Id.

In January 2007, the Interim Constitution of Nepal was adopted and the CPN-M joined the interim parliament and later became part of the government. The same month the UN Mission in Nepal (UNMIN) was established by UN Security Council Resolution 1740, to support the peace process by monitoring the management of arms and armed personnel of both sides, and providing technical support and monitoring for CA elections. After two postponements, the much-awaited elections were held on 10 April 2008. The CPN-M emerged as the party with the most number of votes and formed a coalition government. Notably, there were four female ministers in the government. In May 2008, Nepal was declared a republic and the King stepped down.

Advocacy on the issue of women's representation during the peace process led to a requirement that one-third of the members of the CA, who are tasked to write the Constitution be women. Of the 601 representatives 191 are women. However, only 30 of these won their seats through direct election, the remainder have been included based on party lists.

Impact of Maoist ideology, strategy and tactics

It is unclear how far recent developments, especially the “people's war”, have changed the lives of most Nepali women and girls living in rural areas. These women and girls are subject to the same socio-cultural and religious restrictions as those experienced by their mothers and grandmothers. Some have argued that the conflict increased social mobility and reduced discrimination based on caste, ethnicity and sex through the dissemination of egalitarian Maoist ideology. Information uncovered through this research project suggests that whatever positive societal changes were seen during the conflict may not endure, and were rooted more in aspiration than reality.¹³

The CPN-M gained nine seats in the 1991 elections. In 1996, it presented a charter of 40 demands to then Prime Minister Sher Bahadur Deuba. These demands included radical political reforms, including the abolition of the monarchy and the formation of a new constitution via an elected Constituent Assembly. Few of them addressed issues directly relevant to women, with the notable exception of the general provision for the elimination of all forms of discrimination. More specifically the

¹³ See below (detailing changes in the caste system).

CPN-M demanded that “patriarchal exploitation and discrimination against women should be stopped. Daughters should be allowed their access to paternal property.”¹⁴ With the mainstream political parties showing little or no interest in issues affecting women, the CPN-M gained considerable support among women.

Other factors motivating women to join the Maoist movement included their propaganda about women’s liberation, equality of opportunity within Maoist organisations and the Maoists’ social reform programmes such as their campaigns against alcohol, gambling, sexual violence and exploitation. In areas where Maoists exercised effective control, they prohibited domestic violence, child marriage or abuse, prostitution, extra-marital affairs, alcoholism and gambling. They started to enforce these policies through “people’s courts”, imposing punishments including imprisonment, which was sometimes accompanied by labour and fines.¹⁵ Among the issues raised by the Maoists that attracted women into their ranks were: equal access to inheritance rights and elimination of patriarchal exploitation and discrimination, equal payment for equal work, and the vulnerability of low caste women to sexual exploitation.

In addition, women were motivated to support the Maoists by more general factors such as widespread poverty, unemployment, low success in School Leaving Certificate examinations, and the social stigmatisation of widows, who were increasing in number during the conflict.¹⁶ Many of the women who joined the “people’s war” were from marginalised Dalit, ethnic and indigenous communities.

Respondents referred to a number of factors that encouraged women to challenge their subordinate position and gain a degree of “liberation” despite the risks of backlash. These include regular awareness-raising courses and Maoist campaigns for gender equality that resonated with women’s frustration with the poverty and lack of opportunities they faced in much of rural Nepal.

¹⁴ 40 Point Demand, art. 19, 4 February, 1996, <http://www.satp.org/satporgtp/countries/nepal/document/papers/40points.htm>.

¹⁵ “Nepal: Justice in Transition,” International Commission of Jurists, February 2008, p. 11.

¹⁶ Pyakurel, Uddhab P, “Women in armed conflict: Lessons to be learnt from Telangana People’s Struggle, 2006, <http://www.thefreelibrary.com/Women+in+armed+conflict:+lessons+to+be+learnt+from+Telangana+people’s...-a0168162616>.

Female participation remains one major highlight of the Maoist insurgency in Nepal.¹⁷ It was alleged that the proportion of women combatants was as high as 40 to 50 per cent.¹⁸ However, when a formal verification process was carried out by UNMIN, only 3,846 of the 19,602 eligible Maoist combatants were women, that is, about 20 per cent.¹⁹

In response to a question about whether they experienced any gender-based discrimination while in the Maoist army, one former combatant said that since *“one of our party’s goals is women’s progress,”* she did not experience any kind of discrimination. In response to a question about whether sexual violence and maltreatment were committed against women, the same woman said that, while the state army did perpetrate acts on women, she *“didn’t know about any such incident in our army.”* Similarly, another respondent said that while *“state agents perpetrated many incidents of sexual mistreatment and violence... we, the non-state agents, immensely respected women.”*

Some women interviewed expressed an opinion that the conflict had raised awareness among Nepali women about different issues. For example, they listed the following as positive outcomes of women’s participation: women are able to speak out more; the Nepal Army now recruits women; women are more aware of politics, society and state mechanisms; women’s self-confidence has grown; women’s participation in education and employment has grown; there is less taboo against women who are involved in politics; women in the villages have been taught to *“raise their voices”*; and women have been able to *“break the narrow boundaries of family”*.

Impact of the conflict on women

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 mobilisation of the RNA in late 2001. For instance, Amnesty International reported:

¹⁷ See *“Women in the Insurgency,”* Manju Thapa, Rajdhani, November 14, 2006, p. 7, http://www.asmita.org.np/ArticleArchive/women_in_insurgency.htm.

¹⁸ Sharma, Mandira and Dinesh Prasain, *“Gender Dimensions of the people’s war: Some Experiences of the Rural Women.”* 2004.

¹⁹ Figures taken from UNMIN website, <http://unmin.org.np/?d=activities&p=arms>.

“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.’”²⁰

The prominent and dynamic female presence in the Maoist movement – mostly from the excluded ethnic and marginalised groups – contributed to eroding the hackneyed stereotype of women as passive and defenceless victims of armed violence.²¹ This boosted the morale and confidence of not only the Maoist women themselves, but also other women who witnessed their active roles in the conflict.

Women’s active participation can be found not only in the CPN-M and the Maoist army, but also in the Maoists’ sister organisations such as the All Nepalese Women’s Association (Revolutionary). In addition, many women were active in Maoist local “people’s” government structures and a few were also engaged in the Maoist “justice” system and on the cultural front.²² These women took on various roles such as building their organisations, leading social struggles, commanding (to some extent) and fighting in the battlefields, providing services to the injured, acting as informants, conducting publicity campaigns and so on.

The presence of women in the Maoist organisations and the work of women activists have served to promote the role of women in the country’s institutions,

²⁰ Amnesty International, *A Deepening Human Rights Crisis: Time for Action*, December 2002. <http://www.amnesty.org/en/library/asset/ASA31/072/2002/en/ad246553-d772-11dd-b024-21932cd2170d/asa310722002en.pdf>, at 1. With respect to unlawful killings, Amnesty International believed that at least half fell into that category. It also noted that in 2002 “[t]he vast majority of the victims were civilians targeted for their real or perceived support to the CPN (Maoist); others were Maoists deliberately killed after they were taken prisoner or killed instead of being arrested. In addition, torture is widespread and at least 66 people are reported to have “disappeared” since November 2001 after they were seen being taken into custody by the security forces. The total number of disappearances” reported to Amnesty International in the context of the “people’s war” is over 200.

Human rights abuses by the Maoists have included deliberate killings of an estimated 800 civilians considered “enemies of the revolution”, hostage-taking for ransom, torture of people taken captive and deliberate killings of members of the security forces after they were taken captive.” Id.

²¹ See “Nepal: a gender view of the armed conflict and the peace process,” Maria Vilellas Arino, June 2008, http://escolapau.uab.cat/img/qcp/nepal_conflict_peace.pdf.

²² See “Women in the Insurgency,” Manju Thapa, Rajdhani, November 14, 2006, p. 7, http://www.asmita.org.np/ArticleArchive/women_in_insurgency.htm.

which was previously insignificant, and to promote the role of women in the political agenda. An example is the recruitment of women in the Nepal Army that started in 2006.²³

Changes in social and cultural practices

The conflict brought about a number of changes and consequences that affected both women and men in different ways. In the predominately Hindu society of Nepal, “religious and cultural practices have maintained implicit and explicit rules whereby the woman has restricted mobility, no decision-making and no access to resources.”²⁴ Hence, for women the consequences of the armed conflict are different both in nature and in depth. The results of these changes affected women and men not only at the individual level (at the personal identity level) but also at the levels of family, community and country. Many of the consequences of the conflict were negative for women, disrupting their emotional and physical sense of safety, but there were some more positive effects as well. In some cases, these changes have revealed women’s creativity and resilience, in some others, the disruption and destruction of social identities as well as social and economic structures. Whatever the case, we will only be able to grasp the longer-term repercussions of these changes in the years to come.

In a society predominantly influenced by Hindu cultural and religious norms, women’s virginity is highly valued. Particularly in more conservative rural areas, loss of virginity for women often means loss of marriage opportunities, which can have severe socio-cultural repercussions for them and their families. We heard testimonies and stories of women victims of rape who were married off quickly, sometimes to older men, married men or even to the rapists themselves.²⁵

²³ “Royal Nepalese Army Recruits 68 Women Officers,” The Press Trust of India, Ltd., 21 February 2006. It is alleged that the Nepal Army began to enrol women merely to imitate the Maoists, but women activists had long been demanding to enrol women in the national army by amending the military law. See “Women in the Field of War-Created by Men,” Anju Chhetri, Nepal Samacharpatra, August 17, 2006, p. 4. http://www.asmita.org.np/ArticleArchive/women_in_the_field_of_war.htm.

²⁴ Lily Thapa, Nepal Widows, 2007, see http://www.opendemocracy.net/blog/nepals_widows.

²⁵ This trend was particularly notable in districts of the central and eastern Tarai, such as Siraha, Saptari, Morang and Dhanusha, where women continue to face insecurity and a higher risk of sexual violence because of the ongoing activities of armed groups. A few cases of extreme isolation and discrimination against rape victims by community and family were reported in Saptari and Siraha districts.

o Widowhood

Women who took part in the research who had lost husbands during the conflict were particularly badly affected. In Nepali culture the identity and status of married women are intimately tied to their relationship with their husbands and the larger extended families. The conflict added new dimensions to the situation of these widows.²⁶ Many are young widows between the age of 20 and 30 who became more vulnerable to abuses by their in-laws and members of their community who consider them “*easy or loose*.” Data from Women for Human Rights shows that 78 per cent of widowed women became more vulnerable to abuses from their in-laws and other members of their family during the conflict.²⁷ Participants in the research stated that

“After their family members (especially husbands) were abducted by the conflicting parties, women had to put up with foul language, suspicion, neglect, mistrust and comments about their moral character. If women attended a function, they heard remarks like, ‘They have a lot of freedom after their husbands were abducted. They sleep with other men at hotels.’ When women victims needed external help, other people said no one should go and help them because they were immoral. If someone wanted to help, they stopped that person.”²⁸

“Women are treated not in a good way in this community. Many people accuse me of being a prostitute as I don’t have a husband.”²⁹

In many cases the hardships that these widows suffered were initially expressed by the limitations they endured to ensure the education of their children.

²⁶ See UN Committee on Economic, Social and Cultural Rights indicating its “deep concern [for] the harsh conditions of women living in rural areas, especially those whose conditions have been exacerbated by the conflict, including Tharu women who have found themselves widowed as a result of the death or disappearance of their spouses during the conflict.” Committee on Economic, Social and Cultural Rights, Concluding Observations, 30 April – 18 May 2007, UN doc E/C.12/NPL/CO/2, para. 16, www2.ohchr.org/english/bodies/cescr/docs/e_c12_npl_co2.doc.

²⁷ “A Journey Towards Empowerment and the Status of Single Women in Nepal,” Women for Human Rights, June 2010. The percentage is based on a study involving 41,530 respondents.

²⁸ Focus Group Discussion (Female), Bardiya.

²⁹ Key Informant Interview (Female), Bardiya.

“As the earner of the family was disappeared the women and children faced economic problems. Children could not afford to go to schools and wear better clothes.”³⁰

Many women become deeply depressed at what was happening to them or their immediate family members. Some women stopped eating, and showed symptoms of despair and sadness. In many cases the emotional consequences of the violence translated into physical illness.

“My old mother was alone when the police arrested me with the charge of being a Maoist. My mother stopped eating food and kept crying after the incident. She fell ill later because of this.”³¹

The reactions to the loss of family members or being subjected to torture or other forms of human rights violations created feelings of frustration, sadness, rage and depression. Depending on the type of trauma experienced, many victims felt they were losing touch with reality. *“I was like crazy, I was feeling like I was becoming crazy”* were recurrent answers to explain the impact of the loss of a family member.

For some women, the events endured were so traumatic that they lost their purpose in life.

“My mother-in-law is mentally sick after the incident of Mangalsen. She fainted when she saw the bloodshed in Mangalsen. Since that time she always says, ‘Maoists are coming, they have killed my son’. Later she committed suicide. She use to shout in the middle of the night and sometimes used to wake up early in the morning and wander aimlessly.”³²

Respondents observed that the situation of fear still remains, which can be seen in the way they react when they find themselves in situations that remind them of times during the conflict. Interviewed women and key informants also emphasised that there are not enough psychosocial services available or even information on where to go or on how to deal with the feelings and consequences of the violence. The Transcultural Psychosocial Organisation (TPO) has mapped psychosocial

³⁰ Key Informant Interview (Female), Bardiya.

³¹ Key Informant Interview (Male), Dadeldhura.

³² Focus Group Discussion (Female), Achham.

services in 15 districts of Nepal and has found a lack of psychosocial services in the country. The available services are mainly limited to extreme cases of trauma and psychopathologies.

An additional manifestation of the hardships they suffered was with regard to their financial situation.

*"In the absence of my husband, I had to do all labour, agricultural activities, and all domestic work. My sons became orphans. Managing expenses for children's studies and clothes became difficult. I borrowed things, took debts to survive. I had to discontinue my children's studies. My husband's elder brother and his wife didn't help me a bit. They tried to kick me out of the house. After my husband's death, everyone started hating me."*³³

*"In the absence of their husbands, women have been raped by their brothers-in-law. This has brought about domestic quarrels and suicides have been on the rise."*³⁴

Many women, aware of the vulnerabilities of widowhood, refused to stop wearing the symbols of marriage as a protection against possible sexual abuse by the security forces. Others continued to wear the symbols because the fate of their husbands after disappearance was unclear. Even in cases where communities and families were pressing these women to give up these symbols or to perform the last rites for missing husbands, many women resisted this pressure.

On the other hand, a positive aspect of the conflict, particularly in relation to widowhood, is demonstrated by the "red *tika*" movement that started in 2001. The red marks that married women in Nepal wear on their foreheads are a symbol of the completeness that their husbands bring to their lives. When a woman's husband dies, she loses this completeness and has traditionally been prohibited from wearing the red *tika*. Widows were also prevented from wearing red clothes, associated with married women. The movement, largely initiated by women's rights organisations in Nepal and made possible in part because of the Maoist ideology of equality between men and women, offered red clothes and *tikas* to widows and

³³ Key Informant Interview (Female), Dadeldhura.

³⁴ Key Informant Interview (Male Journalist), Dadeldhura.

encouraged the breaking down of this patriarchal tradition. The movement functioned as an empowerment tool for widows and still continues in many parts of Nepal today.³⁵

Maoist combatants who became widows as a result of the conflict were not forced to follow the cultural rituals nor lose their status as married women.

“They (the women Maoist combatants) don’t follow the rituals and wear the clothes that other widows wear, they do not have to worry (...). They do not regret that their husband was killed, instead they feel proud about their husbands being martyrs.”³⁶

The Maoists also “encouraged” widows to remarry to maintain their status and continue with their lives.

Despite the above example of the “red *tika*” movement and the Maoist practices with regard to widows, in general, social and cultural practices, even if they were suppressed during the conflict, have reappeared. During interviews people agreed that now that the Maoists are no longer exerting control in the villages, certain cultural practices have reverted back to their pre-conflict status. One respondent in Baglung pointed out:

“Even if controlling alcoholism and campaigning for cultural change were nice actions, they could not be maintained because they were based on coercion. No warning is being issued against intemperance at present.”³⁷

In times of conflict, cultural changes can often manifest themselves rapidly. However, such changes are only sustainable if the structures that underpin the social practices are altered. New cultural models can result from new social dynamics. As explained by this respondent from Baglung, the basis for many of the changes at the community level was coercion rather than changes in understanding and societal behavior. The research found some changes certainly occurred, but

³⁵ “Social Impact of Armed Conflict in Nepal,” Anjana Shakya, Social Inclusion Research Fund, 6 May 2009, p.51.

³⁶ Key informant interview (Human Rights Defenders), Kathmandu.

³⁷ Focus Group Discussion (Male), Baglung.

the main cultural patterns remained. More research is needed to ascertain the depth and breadth of social and ideological shifts that may, if at all, be bringing new cultural models into the country's social fabric.

Reversal of traditional roles

Women not only suffered direct physical violence but also had to deal with the consequences of what happened to their family members. As mothers and wives of the disappeared, the tortured and the dead, many were forced to sustain their families in ways beyond their previous experience in a reversal of traditional roles. As one man said:

“Certainly, the husband is considered to be a guardian of the family. He is the family's main provider. But when he is forced to go abroad for security reasons, his family responsibilities fall on woman's shoulders. Say a woman is left with three to four children to take care of at home and her husband has gone abroad. There is no guarantee that he will have a good income in a foreign country. Some men who could afford moved to Assam or to other places in India, some sought refuge with their relatives. In their absence (from home), women had to be responsible for their children's education, health, food and clothes. If they are better off (than the rest of the lot), say with an income or land/property, they had means for survival. But what about those families who had to work as labourers? The economic burden certainly fell on women's shoulders. Given such circumstances, women were affected the most.”³⁸

One factor in this increase in female-headed households is the phenomenon of “conflict wives”, referring to girls and women enticed into marriage by security forces personnel stationed in a village and subsequently abandoned when the army unit moved out.³⁹ The result was a sharp increase in the number of households headed by single mothers and of teenage age, leaving them financially abandoned and stigmatised.

Discrimination against women, and widows in particular, has been part of Nepali society and its structures for a long time. A woman's position in society is marked

³⁸ Focus Group Discussion (Male), Morang.

³⁹ IHRICON, “Sexual violence in the “People's War” The impact of armed conflict on women and girls in Nepal,” 2006. Available at <http://www.iansa.org/women/vaw/ihricon-armed-conflict-2006.pdf>.

by “her relationship with the men who provides her with protection.”⁴⁰ In the words of one female respondent in Morang:

“Our society is based on a patriarchal system, because of which there is a high dependence on men. This still continues to be the case. So when the men are away from home, women obviously face the crisis.”⁴¹

Female-headed households impacted negatively on women, increasing poverty among them and making them more vulnerable to gender-based violence.⁴² At the same time, they gave women opportunities to come out of their traditional roles. For instance, in the absence of men in the village, women started to plough the land while traditionally women had been forbidden to even touch a plough. One participant in a discussion in Kailali district explained:

“We are doing all the work that men used to do like ploughing the field, repairing the roof, cutting the firewood.”⁴³

In some cases these challenges served to empower women, showing them that they had the ability and capacity to manage things they had never imagined before. In other cases however, women encountered a difficult emotional situation when facing these new responsibilities. These women found the changes in role a burden that made them feel overwhelmed and unprepared for their added responsibilities.

“Women obviously faced economic problems. Women and men are two wheels of the same cart. As soon as one of the wheels slips off the cart, it cannot move forward. Similarly, both wheels are needed to run the family. Women’s responsibilities increased after the men left home due to the conflict. Several women have lost their husbands; several others have lost their sons. Our society is based on a patriarchal system, because of which there is a high dependence on men. This still continues to be the case. So when the men are away from home, women obviously face the crisis.”⁴⁴

⁴⁰ Focus Group Discussion (Female), Morang.

⁴¹ Focus Group Discussion (Female) Morang.

⁴² See below, Economic consequences.

⁴³ Focus Group Discussion (Female), Kailali.

⁴⁴ Focus Group Discussion (Male), Morang.

Unwanted pregnancies and children born of rape

Research reveals that the emotional, social and economic implications of unwanted pregnancies and children born of rape have been devastating for many women. In Nepal, non-marital pregnancy is highly stigmatised. Women who conceive out of wedlock face tremendous social, cultural and economic pressures, especially if they are from Hindu families. Many women were not allowed to register their children born of rape, leading to significant and interrelated further problems. One is that these children have been unable to obtain citizenship cards, which in Nepal represents a “civil death” for the child. Although children can obtain citizenship on the basis of their mother’s citizenship,⁴⁵ women in rural parts of the country may not have citizenship themselves. Thus, if the father of the child is absent, the child will face difficulties registering for citizenship.

We heard many stories of how women were ostracised by their own communities and families after having fallen pregnant as a result of rape or after sexual relationships with government security force personnel or CPN-M cadres.

“When my family knew that I was pregnant from rape, they put a plastic tent in the farm and asked me to live under it. They didn’t allow me to remain at home after I gave birth to the baby. They built a small hut with a plastic canopy. Raindrops fell from it. What could I do? Everyone hated me. My family members approached me at times and gave me food. Later after I gave birth, the villagers found the man who raped me and brought him before the village elders. The meeting decided that the man should take care of me and the child. I was forced to ‘marry’ him but he fled after four days. No one was there to bless my baby. Where could I go at that time? I didn’t go anywhere. I endured everything silently.”⁴⁶

A Dalit girl from Baglung district describes how she faced an unwanted pregnancy following a relationship with an RNA soldier, and the challenges she faced after having conceived a child out of wedlock:

“A soldier tried to come close to me all the time and said nice things to me. I was very young and was studying in class four. He said that he loved me very

⁴⁵ Nepal Citizenship Act (2006), Section 8.

⁴⁶ Key Informant Interview (Female), Saptari.

much and wanted to marry me. I believed him and later became pregnant. I was innocent and illiterate and thought he would marry me. When he discovered I was pregnant he left me. When I went to the barracks to look for him, I was scolded by other army personnel. They told me that it was all my fault as I spoke and slept with many men and now that I was blaming others for my pregnancy. Everyone in the village scolded me. I was left alone and no one was there to help me. We belong to a poor family. I don't have a father and my mother is illiterate. Living in this condition of poverty, I had to remain hungry for two days even after the delivery of my child.”⁴⁷

Female CPN-M cadres who conceived children out of wedlock, either after rape or within consensual relationships with other party cadres, also reported that they faced rejection and discrimination from their families and community members. When we asked a former cadre who had a child after being raped by a fellow CPN-M cadre about the reaction of her community and family members, she said:

“They do not love me as before. People spread rumours about me for no reason and humiliate me. I cannot show my face to my parents because I had gone with the Maoists without telling them anything.”⁴⁸

Some former Maoist cadres expressed a sense of shame and regret about joining the Maoists and attributed their unwanted pregnancy to that decision:

“If I had not joined the Maoist party, I would not have suffered rape nor would I have given birth to a child before marriage. I have a daughter but I never became a wife. I cannot call anyone my husband. I have been alienated from life. My life is incomplete. It is so long. I wonder how to live it. I have put a huge burden on to my parents. If there is anything hopeful, it is my daughter and I have been living my life smiling with her.”⁴⁹

On the other hand, the researchers also received a few testimonies from survivors of rape whose husbands and family accepted what happened to them. This was significant given the fact that the greatest fear many victims expressed was the risk of rejection from their husbands after rape.

⁴⁷ Key Informant Interview (Female), Baglung.

⁴⁸ Key Informant Interview, (Female), Western Region.

⁴⁹ Key Informant Interview (Female), Western Region.

Rise in fear and suspicion

One of the main consequences of the conflict in both communities and families was a rise in fear and suspicion. People felt that they could not trust their families, neighbours or community members. The feeling that anyone could be labeled and accused of being a spy coupled with the context of insecurity and uncertainty created a general atmosphere of fear. Fear became a socially shared reality associated with other feelings such as isolation, suspicion and vulnerability. As a result of this general environment of fear, the trust built over time between the individual and the community disappeared. This pervading lack of trust reinforced the feeling of fear, and this in turn generated more distrust.

During the conflict, fear manifested itself in different ways in different situations. Generally when the army came into communities, people were afraid of threats, disappearances and other human rights violations. In the case of women, there was the fear of being raped or sexually abused by members of the police and army.

"I was sleeping with my children and the army at night came and pulled me out of my house and pointed gun at my head. I trembled a lot. They asked me how many daughters I had and I told them that I had three and they were sleeping but they didn't believe me. (...) If they saw any police (the children), they would shout that the police would kill them."⁵⁰

"Whenever there is a helicopter flying in the sky, they run towards the streams. They are still scared that the helicopter would throw bombs and bullets towards them."⁵¹

In the case of the CPN-M, women often did not fear sexual assault. However, the presence of Maoists in communities created fear amongst the people that girls, their children or husbands would be abducted and that members of the community would be subjected to "people's justice"⁵² and revenge.

⁵⁰ Focus Group Discussion (Female), Palpa.

⁵¹ Focus Group Discussion (Male), Achham.

⁵² "People's justice" referred to a system of "courts" set up by the Maoists to impart local justice. Punishments ranged from beatings to death sentences, depending on the severity of the alleged offence.

As the conflict continued to unfold, the feelings of fear and mistrust became more prevalent. They were less anchored in concrete experiences, but expressed more as a generalised feeling of uncertainty with a lack of rules, in which anything could happen to anyone. Fear and a feeling of lack of control numbed the population, creating a widespread sense of despair.

“At that time we were even afraid of hearing the words police and army. Even though there we were not at fault we were afraid.”⁵³

“They (the women) had more fear at night time whether to sleep or to stay alive. They had fear for themselves, their children and their husband. Fear that someone might come at night or something wrong might happen.”⁵⁴

This generalised feeling of fear even altered the simple everyday life interactions within communities. People would be afraid to gather in groups, to be seen with certain members of the community, to walk alone, to go far from their houses, to raise any suspicion of having sided with any party involved in the conflict. This ultimately weakened community ties and a significant number of people left their communities. This particularly affected women:

“When the men were away, the overall family responsibility fell on the shoulders of the women. Women with little children did not have food for themselves; they needed to fend for their little ones in addition to their own problems. Furthermore, daily strikes hindered their work. Sometimes, they couldn’t get out of their houses for as long as three days because bombs were exploding here and there, and people were being shot at. Such incidents instilled in them a sense of mental fear, a reflection of which can still be seen on their faces.”⁵⁵

“A big problem was a fear of death; either the Maoists would take away my husband, there would be fear to be killed by the Maoists. We feared that Maoists would take away our babies. We used to go into the jungle near to home, if we went far deep inside the jungle there would always be fear that the army or the

⁵³ Focus Group Discussion (Female) Achham.

⁵⁴ Focus Group Discussion (Female) Kapilvastu.

⁵⁵ Focus Group Discussion (Female), Bardiya.

Maoists would rape us or kill us. There was fear to walk alone; there was also an extreme fear of unmarried girls being taken.”⁵⁶

“During the conflict the women and children were afraid even if they saw the people gathering in crowds.”⁵⁷

Abuses from both sides of the conflict, together with feelings of insecurity, fear and distrust, generated a set of emotional responses. During the research women referred to the violent incidents experienced during the conflict as something that did not seem to be happening, a sort of dream. The intensity and depth of the violence were in many cases too terrible to accept.

“We felt as if we were dreaming. Many things happened at that time. We didn’t know whether it was a dream or a reality. We saw things happening at that time which we had never seen in the past.”⁵⁸

Women were caught between both sides. They were fearful that the Maoists would come at night and force them to cook for them and that the next day they would then be targeted by security forces for feeding and supporting the Maoists.

“We had to pay donations to the Maoists and cook food for them. Even if we didn’t have food we had to bring it from somewhere and give it to them.”⁵⁹

Changes in the caste system

The social structure of caste-based discrimination in Hindu society, in which some groups are placed at the top (Brahmins and Chettris) and others at the bottom (Dalits) with no possibility of social mobility and no enjoyment of basic rights, has been prevalent in Nepal for hundreds of years. In the case of women, this type of discrimination adds another layer to a patriarchal social system in which women are considered second class. For Dalit women in Nepal, this double discrimination means less access to education, health care and employment.

⁵⁶ Focus Group Discussion (Female), Makwanpur.

⁵⁷ Key Informant Interview (Female Human Rights Defender), Morang.

⁵⁸ Key Informant Interview (Female Human Rights Defender), Morang.

⁵⁹ Focus Group Discussion (Female), Palpa.

“Dalit women also bear the brunt of exploitation and violence in the country and are largely perceived as being ‘sexually available’ to ‘upper-caste’ men (...) Dalit women’s disproportionate and extreme poverty stems from illiteracy, untouchability, physical violence and lack of empowerment. The social scenario has confined them to the lowest paid jobs.”⁶⁰

For many analysts of the Nepali conflict, caste-based discrimination is an important element at the core of the conflict. Caste discrimination and gender discrimination were two of the Maoists’ key platforms for recruiting members into their ranks. Even though some changes in the caste system have been observed in Nepali society, a great deal of discrimination still manifests itself in everyday life.

According to the information gathered during the research, the issue of caste-based discrimination was directly addressed by the Maoists during the entire duration of the conflict and there have been some visible changes regarding this practice:

“The Maoists used to say that there were no castes; the only two castes were male and female. We were told that change will come gradually. To end caste-based discrimination the Maoists did not take the Dalits to the non-Dalits’ houses. We, too, agreed that it was not the proper way. The best way was to bring changes in thinking. The communitarian relationship improved because of this.”⁶¹

“The main positive impact of the conflict was seen in the case of Dalits. The act of sprinkling water for purification after a Dalit touched a thing diminished and it has now been almost eliminated.”⁶²

“Previously we didn’t allow Dalits inside our houses but now they come to our houses and eat. Our parents used to follow the tradition of untouchables but now it is not like that. We all stay together.”⁶³

⁶⁰ Center for Human Rights and Global Justice. “The missing piece in the puzzle. Caste discrimination and the conflict in Nepal,” p. 12, 2005.

⁶¹ Focus Group Discussion (Female), Baglung.

⁶² Focus Group Discussion (Male), Dadeldhura.

⁶³ Focus Group Discussion (Female), Achham.

Although some changes have been seen, many of the testimonies and opinions heard during the research were not necessarily based on the reality of the current social situation in the country, but rather on the desire to fulfill an aspirational goal. For some, this goal is anchored in political ideology, for others in values of social inclusion and equality. The range of opinions varies from seeing caste-based discrimination in Nepal as having been eliminated to seeing very little change.

Some respondents recognised that even though the practice of caste-based discrimination is not observed in people's behaviour anymore, it still lies deep in the mentality of Nepali society. After all, changes in attitudes take longer than changes in behaviour. The challenge of ending caste-based discrimination still has a long way to go.

*"Caste-based discrimination and the issue of untouchability reduced a little during the conflict. We, the Dalits too, were full of self-confidence but the residue of the caste-based discrimination was still in our minds. If not directly, we felt that we were the victims of discrimination indirectly."*⁶⁴

*"People don't give us ideas, considering us untouchables. They don't trust us if we go for loans. Even if we get a loan then the interest rate is high. We have been facing a lot of problems as we are Dalits."*⁶⁵

According to the focus group discussions, there has been less change in older generations and older people are more resistant to changing their attitudes about caste-based discrimination. During an interview a man mentioned how his father had scolded him for eating with a group of Dalits. This generational gap was mentioned several times during the research:

*"Even now we have to stand in a queue if old people come to the public tap. In our village we fill our vessels in a queue. There are no hassles when young people are around. But old people don't allow us to take water without hassles. The old generation is still relentless against us."*⁶⁶

⁶⁴ Focus Group Discussion (Female), Baglung.

⁶⁵ Focus Group Discussion (Female), Kailali.

⁶⁶ Focus Group Discussion (Female), Okhaldunga.

Changes In religious celebrations and traditional rituals

During the conflict, in the name of security, the police and the army did not allow people to gather in large numbers. This greatly affected the ability of people to practice religious and traditional rituals or to celebrate festivals, religious rites or hold community fairs. The police or the army would often arrest groups of more than four people. On the other side, Maoists would often punish civilians who participated in certain celebrations and rituals because for them religious rituals were part of the oppressive system and therefore should not be performed.

“It was very difficult to celebrate festivals. The army and the police used to question when four people gathered at a place. The Maoists didn’t allow us to do the religious rites. They asked us why we had done the religious rites. When we called a Brahmin to do some rites, they will say, ‘Why have you called a Brahmin?’ We could organise marriage ceremonies only after informing the army and the police. We used to hold the marriage ceremony for just one day. (...) We were afraid to perform the last rites. People performed the last rites with fear as they had heard that the Maoists would kill those people who were engaged in last rite ceremonies.”⁶⁷

Because there was an explicit Maoist policy to eradicate certain traditions, practices such as *chaupadi* (where menstruating women were excluded from their homes) diminished in some areas of strong Maoist presence. This cannot be attributed solely to the Maoists since women’s groups and civil society organisations have long been advocating such changes, but during the research people recognised that the ban on *chaupadi* and other social practices was to some extent successful and the result of Maoist efforts.

“Previously they didn’t allow us to sit together but now it is not like that. In ward number 9, among 90 houses only 9 families still follows the chaupadi.”⁶⁸

“Decline in the chaupadi, those things have alleviated because of many awareness activities. The Maoist rebellion might have had some hand in its alleviation, its influence should not be denied.”⁶⁹

⁶⁷ Focus Group Discussion (Female), Dadeldhura.

⁶⁸ Key Informant Interview (Female), Achham.

⁶⁹ Key Informant Interview (Female), Palpa.

Efforts to protect women and girls during the conflict led to some perverse developments. During the research it was reported that child marriages increased as a result of insecurity for young girls. Families would marry young girls off in the hope that their status as a married woman would provide some sort of security against abuses by the security forces and would prevent the Maoists from taking them into their ranks. In Dang, key informants reported an unusually high number of young girls being married:

“If they were not married then they would be taken by the Maoists from their schools. As soon as a girl is married the responsibility will pass to the husband’s house.”⁷⁰

“There were no problems for marriage. Girls were married away in their childhood due to the fear of Maoists taking them away and security forces raping or killing them.”⁷¹

Cultural change in any society is generally part of a long-term process. During the conflict in Nepal, some cultural practices changed as a result of the socio-political ideology of the Maoist insurgency. Other changes were influenced by the specific circumstances and interactions triggered by the conflict.

“The armed conflict has also triggered the change on social malpractices, gender and caste-based discrimination, such as domestic violence, alcoholism, chaupadi, dowry system, polygamy, unnecessary expenses has been gradually decreasing with increased awareness and (Maoists) political campaigns.”⁷²

Economic consequences

One of the main consequences of the conflict was its impact on the local economy, particularly on the ability of families to earn an income. Recurrent strikes and closures frequently prevented small businesses from operating, losing income for many families who were just making ends meet before the conflict.

⁷⁰ Key Informant Interview (Female), Dang.

⁷¹ Focus Group Discussion (Female), Dadeldhura.

⁷² Key Informant Interview (Female), Dadeldhura.

“The financial problem is the most severe one of all. During the conflict, there were strikes and closures, so businesses couldn’t operate. People lost their investment.”⁷³

The lack of security, the constant threat to people’s lives – especially to men – and the inability to gain an income due to the conflict resulted in the displacement and migration of many men and boys.

“The economic conditions were at their lowest point (during the conflict). It was difficult to work in the fields. Maintaining the household proved difficult for many women as their husbands had gone to India to find work.”⁷⁴

“Those men who used to engage in farming have to go to India for their safety and the workload was left to women. It was difficult for women to manage the workload inside the house and in the field – that is why production (crop) decreased. (...)Women had to take on all the responsibility of the family workload.”⁷⁵

“The youths had to leave the village, which came across as a problem. In some villages, no men were found in five to seven families; the only occupants of the house were women.”⁷⁶

The conflict had a devastating impact on the ability of families to support themselves without external assistance. Women were often forced to assume the “double burden” of being both the sole breadwinner and caregiver. These roles were made even more difficult by forced displacement, strikes and extortion by Maoists and criminal groups.

During the research women recounted how the absence of their husbands left them with: “nothing to eat”, “starved for days,” “we did not have anything to put in our mouths.” Family members would support these women but only on a temporary basis. The precariousness of the situation forced many women to “learn how to do their husbands’ work.” Women’s traditional roles in the private sphere

⁷³ Focus Group Discussion (Female), Morang.

⁷⁴ Key Informant Interview (Female), Dadeldhura.

⁷⁵ Key Informant Interview (Female), Kailali.

⁷⁶ Focus Group Discussion (Female), Morang.

of their household changed substantially in the absence of men. For some women this meant becoming farmers and working the land, for others without access to land, it meant searching for income from whatever source they could find. The workload for women increased as well as the responsibilities within their families.

“My old mother, my brother, sister, and I constituted the members of my family. My father had died earlier. Many economic troubles came to my house during the conflict. My mother couldn’t eat and couldn’t work because she was alone at home. She fell ill. I had to sell my cattle cheaply to pay for her treatment. I sold all the grainstock. I worked as a midwife and health volunteer. I fulfilled some of my needs by raising poultry and goats.”⁷⁷

The economic problems and constraints that the conflict brought for women had further consequences. During the research, women stated that the change in their household economy not only increased their household responsibilities and workload – it led to the disintegration of their families. In some cases, this was temporary due to displacement, in others it was permanent due to the death or disappearance of the spouse. Other problems noted include: insecurity because they had no husband to protect them; poor school performance and abandonment of school by their children; a decrease in access to loans as the main wage earner was no longer present to serve as guarantor; and problems in sealing marriage agreements.

“The security personnel used foul language and scolded the women while patrolling the village. They asked unnecessary questions and showed unnecessary interest. Women were forced to take up the more laborious and risky jobs when the men were not at home. Women with disappeared husbands were viewed differently. Single women were treated as burdens. It was challenging for them to send their children to school. It was also very hard for them to secure the food needed in the house.”⁷⁸

“I don’t have anything economically. My elder brother is not doing anything after the School Leaving Certificate. We have two Katthas of land on the side of the Koshi River. Mother says that it’s hard to send me to study as they lack income.”⁷⁹

⁷⁷ Key Informant Interview (Female), Dadeldhura.

⁷⁸ Focus Group Discussion (Female), Bardiya.

⁷⁹ Key Informant Interview (Female), Saptari.

3

Sexual violence during the conflict

Information about sexual violence against women and girls during the armed conflict in Nepal is scarce and scattered.⁸⁰ While other conflict-related human rights violations, such as enforced disappearances, killings and torture, were widely reported and fairly systematically documented, the issue of sexual violence has been largely ignored by national and international organisations as well as national institutions such as the National Human Rights Commission. Certain factors, such as cultural stigmatisation, insecurity and fear of retaliation from the warring parties, discouraged reporting of sexual violence during the conflict. The fact that it has remained an overlooked and under-researched phenomenon has left most victims and survivors without much-needed psychosocial support, medical assistance and legal recourse. These are important difficulties to overcome, through sensitive and professional assessment of women's views about the conditions and circumstances which would make them feel comfortable in coming forward with their cases.

Research findings reveal that women and girls were particularly targeted for rape and other sexual violence in certain contexts. In general, the majority of women and girls who reported incidents of sexual violence lived in areas perceived to be CPN-M strongholds or close to army barracks.

⁸⁰ Although victims of sexual violence may be either men or women, in a vast majority of cases it is women who are exposed to sexual violence at the hands of men. Thus, this research focused on examining sexual violence against women and girls during the conflict in Nepal.

Findings also indicate that the reduced presence of men in households during the conflict was taken advantage of by the security forces, CPN-M cadres and private individuals because it was easier to target women and girls.

It is widely recognised that members of marginalised caste and ethnic communities were disproportionately affected by the conflict in Nepal.⁸¹ This is largely because the CPN-M targeted recruitment in these communities, leading to their widespread victimisation by the security forces. Research findings indicate that although women across all caste and ethnic groups were victims of sexual violence during the conflict, women from the most marginalised communities – geographically, economically or socially – were more vulnerable to violence, including sexual violence. Findings also reveal that the RNA targeted entire communities in an attempt to flush out the CPN-M. In one village in Achham district, villagers alleged that they had been targeted by the RNA simply because they were Dalits and had therefore been identified as a “Maoist community.” In one particular incident, RNA personnel set around 34 houses on fire. In the same community, women were raped and both men and women were physically tortured. The Dalit victims alleged that the neighbouring Brahmin village was spared while theirs was completely destroyed.⁸²

In terms of geographical location, cases of sexual violence were reported most often in remote areas such as Kalikot, Rolpa, and Achham districts.

Victims of sexual violence committed by the security forces were often accused of supporting the CPN-M or having some affiliation with them. In many cases, women were targeted because their husbands or family members had joined the CPN-M.

Female CPN-M cadres were subjected to particularly brutal forms of sexual violence by security forces, and research findings indicate that rape was a common practice adopted by the RNA to punish female CPN-M cadres and sympathisers for their rebelliousness against the state and defiance of their traditional roles. For instance, in Palpa district the research team collected witness accounts of three female CPN-

⁸¹ Dhakal, Suresh, Khagendra Sangraula and Govinda Bartaman, *Whose War? Economic and Socio-Cultural Impacts of Nepal's Maoist-Government Conflict*, Kathmandu: NGO Federation of Nepal, 2003.

⁸² Focus Group Discussion (Male), Achham.

M cadres being raped and then executed, following which their mutilated bodies were left on display as a warning to female villagers not to take up arms against the government.

In a number of cases, wives of government officials or security forces personnel and women accused of having relationships with such men were subject to some form of violence (including sexual violence) by CPN-M cadres. In one such incident, a woman reported that she was accused by the Maoists of spying against them for the police and was abducted for three days. She alleged that she was raped by two Maoist cadres during her captivity and described how the two men then battered her legs with iron rods and broke them. She was later left in a nearby village “to die”. She was rescued by local villagers and taken for treatment. The woman said that she became pregnant due to rape but was forced to place the blame on the local police personnel. Sometimes such women were detained in Maoist-run labour camps, ill-treated and publicly humiliated, for example, by having their hair shaved off, having embarrassing signs hung around their necks or being garlanded with shoes and paraded around their villages.

Perpetrators

In the geographical areas covered by the study, findings indicate that although both CPN-M cadres and security forces personnel perpetrated sexual violence against civilians, including rape, the majority of attacks were committed by the security forces.⁸³

Security forces

Pre-existing research backed by our own findings suggests that the most egregious acts of sexual violence during the conflict were committed by the RNA following their initial deployment in November 2001 and by the NP when it operated under the unified command of the RNA between 2003 and 2006. It has also been alleged that many women became victims of sexual violence during the earliest phase of the conflict during a number of NP operations in the mid-western and western regions. Operation Romeo,⁸⁴ launched in November 1995 in Rolpa district, and

⁸³ This finding correlates with a study published by IHRICON in 2006, “Sexual Violence in the “People’s War.”

⁸⁴ See Amnesty International, “Human Rights Violations in the context of a Maoist Peoples’ War,” December 1997, (discussing in detail the human rights abuses committed during Operation Romeo).

Operation Kilo Sierra II, launched in 1998, both resulted in a sharp increase in allegations of serious human rights violations, including sexual violence, in those regions.⁸⁵

Findings from Achham, Kalikot and Rolpa districts reveal that when rape occurred in the context of military operations it was often preceded or followed with other forms of violence including verbal abuse, death threats, beatings and theft of victims' belongings such as ornaments, money, and household goods. Rape victims allege that the perpetrators frequently verbally abused them, calling them "*whore*", "*daughter of a whore*" and often associating them with the CPN-M, for example: "*You are a Maoist; open the door, daughter of a whore.*"

A 40-year-old woman from Achham who was raped by RNA personnel describes her experience as follows:

*"What did the men think at the time they took away my honour? They didn't even leave any dishes, the nice and old plates and even my father-in-law's tobacco-holder. They burnt all our clothes. There was so much oppression."*⁸⁶

Interviewers also heard several reports of security forces personnel setting the houses of victims on fire after raping or sexually abusing them. For instance, in Kuinka VDC, a remote village in Achham district, victims described how RNA personnel set an entire Dalit settlement on fire and raped several women from that community. The villagers alleged that the RNA soldiers did not allow them to put out the fire.

Reports from Kotbada, Kalikot presented a similar story. A group of women from the village described what they endured:

"There were three groups of soldiers. One group went to Lulu, second to Malkot and third went to Lokodha. All of the groups came to this place. The first group that came to our village warned us and left. Then the second group

⁸⁵ Human Rights Watch, "Between a Rock and a Hard Place," October 2004.

⁸⁶ Key Informant Interview (Female), Achham.

came, they broke into our houses and threw away our belongings and clothes and the third group from Malkot set our houses on fire. They abused us too.”⁸⁷

Based on the interviews with victims and witnesses, it can be inferred that the security forces, particularly the RNA, often committed sexual violence, including rape, as a deliberate strategy. The apparent aim was to instil fear in local communities and send a message to the CPN-M and their supporters that such acts were in reprisal for their affiliation to the CPN-M and engagement in activities against the state. This pattern was particularly evident in areas identified as CPN-M strongholds, such as Kalikot, Achham and Rolpa.⁸⁸

Findings reveal that security forces personnel frequently subjected women and girls to some form of sexual violence during both search operations and regular patrols, often accusing them of being supporters or family members of the CPN-M. Findings also reveal a higher incidence of sexual violence by the security forces in the immediate aftermath of military operations.⁸⁹ Rape was often more violent after a military operation and carried out by multiple perpetrators. Researchers documented several such gang-rapes, where single women were raped by RNA personnel. Our investigations into allegations of multiple gang rapes of women by the security forces in Achham district,⁹⁰ corroborated by research findings from Kalikot district,⁹¹ illustrate that gang-rapes took place during military operations in far and mid-western districts.

An 18-year-old Dalit girl was raped following the CPN-M attack on Mangalsen in Achham district in 2002. She described how she became a victim of gang-rape by the RNA in the context of a military search operation:

“It was the third day after the Mangalsen attack. Around 300 army personnel had come to our village following the incident. That day, I was on my way back home along with other women from the forest. It was around 3.30 in the

⁸⁷ Focus Group Discussion (Female), Kalikot.

⁸⁸ Such rapes were frequently carried out when men were absent from households or villages and with an intention to extract information about the whereabouts of the male family members or the CPN-M.

⁸⁹ See also below, “Other sexual violence by security forces.”

⁹⁰ Focus Group Discussion (Female), Achham.

⁹¹ Key Informant Interview (Female), Kalikot.

afternoon. We were carrying firewood. We were stopped by the soldiers on the way. They were around 30 of them; they were in uniform and carrying big guns. The soldiers started asking me about the whereabouts of my brother. When I said that he was in India for work, they got furious and thrashed me. They pulled my hair and alleged that my family and I were Maoists and we supported their activities. They beat me with the butts of their gun and questioned me repeatedly about my affiliation with the Maoists and threatened me to get ready to bear the consequences of being a Maoist. Then they dragged me to a bamboo bush and five of them took turns and raped me violently. They left me there to die. I fell unconscious – I don't remember for how long. When I regained sense, my legs were hurting badly because the soldiers were so violent. I was also bleeding and experiencing severe vaginal pains. Later on, I heard that other women who were with me were also raped at the same time.”⁹²

Similarly, several women from other villages in Achham and Kalikot described how the security forces came to their villages during search operations a few days after the attack on Mangalsen and raped or attempted to rape them. A group of women in Kotbada village in Kalikot described their ordeal:

“It was not only beating. We were sleeping with our husbands when the army came. They pulled our hair, put children in one room and women in the other. Our jewellery was stolen and they raped us. Our husbands were captured. Some were taken to the jungle and killed.”

“They did that to all women. They entered into houses directly; there were so many of them. They took men to one side some distance away and they locked the women inside their houses and did everything to us. Do you understand what we are saying? It was very hard for us to save our own lives, we survived, though. We could not do anything at that time.”⁹³

In a few instances, even pregnant women and new mothers were not spared:

“I was pregnant at that time. My husband ran away to save his life. They came to my house and raped me.”⁹⁴

⁹² Key Informant Interview (Female), Achham.

⁹³ Focus Group Discussion (Female), Kalikot.

⁹⁴ Key Informant Interview (Female), Kalikot.

Sometimes, women were gang-raped by security forces in front of their children and husbands. A 40-year-old Dalit woman from Achham district told us how her daughter witnessed her rape and that they were both still suffering the psychological consequences of the attack:

“They kicked the door and broke in. As soon as they entered they snatched my son away from my lap, scolded him and threw him away. My daughter started crying. I covered her with a cloth. I was afraid whether they would take my daughter too. I cannot say everything what the three persons did to me. I had lost my consciousness. But when they went, I tried to get up slowly but my vagina was bleeding. I couldn’t even get up and walk for few days. My daughter was big enough to understand what happened and she knows it all. She asks me about it time and again. She argues with me. I’m anxious about my daughter.”⁹⁵

Individual security forces personnel appear to have taken advantage of the climate of impunity that existed during and following the conflict, guaranteeing that they were rarely held accountable for criminal actions, including rape of women and girls. In many cases, superior officers or higher authorities knew about the rapes and did not take action against the perpetrators.⁹⁶ Rape committed in this more opportunistic way appears to have been more prevalent in areas where army barracks were located (temporarily and permanently).⁹⁷ The climate of impunity meant that women and girls were often subjected to sexual violence while undertaking daily activities outside the home such as collecting firewood or thatch, fetching water, going to the market, or when at home alone performing domestic work. In addition, a number of young girls reported that security forces personnel subjected them to inappropriate and unnecessary “*security checks*” on the way to school. These often involved touching their bodies, such as their breasts and hips, and also verbal abuse.

⁹⁵ Focus Group Discussion (Female), Achham.

⁹⁶ Key Informant Interview (Human Rights Defender), Kathmandu; Amnesty International, *supra* note 20, at 3.2.3.

⁹⁷ This correlates with an IHRICON study which found: “in settlement areas surrounding the army barracks, army men were often found to be those who committed many negative acts and were often protected from punishment of their wrongdoings by their high ranking officers.” IHRICON, “Sexual Violence in the “People’s War,” 2007, p. 3.

Testimonies of victims and witnesses reveal that women and girls were subjected to torture of a sexual nature (including rape) while being held in detention by the RNA and NP. A woman from the Western region who was arrested and detained by the RNA for several days described a story of a co-detainee:

“I had gone to a hospital for check up, where I met her. She had bruises and blue patches all over her hands and legs. She was in such a condition that she couldn’t speak up clearly. She was crying and she said ‘I was tortured a lot by the army personnel inside and they even sexually abused me. I don’t believe that I could ever come back now; they would kill me and never release me. My children, I don’t know what will happen to them?’ From that day I never saw her again and I don’t know whether she is still alive or dead.”⁹⁸

Research findings indicate that especially in detention conditions, the RNA and NP tortured and harassed women. Forms of such torture included inserting foreign objects, such as guns or sticks, into the vagina; walking on the body of the women wearing heavy boots; punching and kicking on sensitive areas such as breasts and genitals; applying electric shocks to genitals or breasts; raping detainees while they were blindfolded with their hands and feet bound; forced nudity; use of vulgar language and threats of sexual abuse.

A woman from Saptari district who joined the CPN-M after being physically abused by her husband and in-laws described how she was ill-treated, tortured and brutally gang-raped multiple times by members of the RNA while being held in detention in army barracks.

“In 2005, the members of the RNA arrested me for the fourth time from my home. First they took me to the Barmajhiya Camp and subsequently to several different camps which I cannot name as I was handcuffed and blindfolded all the time. When I talked, they would hit me with sticks and rods. I was punched on my face and kicked on sensitive parts like breasts and sexual organs. They also inserted pins under my nails and verbally abused me. They only gave me a little rice and chilli as to eat and kept me in a room which was wet, sandy, and swarming with mosquitoes. I was the only woman.

⁹⁸ Key Informant Interview (Female), Baglung (note the co-detainee described by the respondent remains disappeared).

At around 12 midnight, they would come and rape me in the room. They would come in a group, sometimes 10, 12 or 15. They would remove the chains of my hands and legs, strip me naked, but would rarely remove the blindfold so that I wouldn't be able to see them. Then they would rape me turn by turn. In the morning, they would bring back my clothes. I do not know for how many days they raped me like that. Due to the rape, I now suffer from vaginal bleeding, sometimes every other day, sometimes six or four times a month. My body, eyes, head and limbs have not yet recovered.”⁹⁹

Other sexual violence by security forces

Women who visited army barracks in an attempt to find their loved ones or to secure their release were often subject to sexual harassment. Many women told us that the most difficult problem they faced during the conflict was sexual harassment by the RNA, and that they lived in perpetual fear that the soldiers would harm them. During a focus groups discussion in Kailali, a woman described how they were frequently harassed by soldiers:

“We were often harassed by the military and it was a very difficult situation. It was difficult because if we told other people about these incidents, they might have killed us. It was so unfair that we were never able to protest against such behaviour.”

“It was about five in the evening and one soldier came to me saying that he had some work with me, but he started touching me. I then pushed him and ran away.”

“One day when my husband had gone outside for work, a soldier came into my kitchen where I was cooking. He showed me a Rs. 500 note and asked me to make love to him. He started grabbing my hand. I freed myself and ran away. I returned home only after the man had left. Since the army harassed us all the time, we fled to India with our children as living here became very difficult. We've returned only after the peace agreement.”¹⁰⁰

⁹⁹ Key Informant Interview (Female), Saptari.

¹⁰⁰ Focus Group Discussion (Female), Kalikot.

False marriages

The research revealed a phenomenon of “false marriages” when government security force personnel married girls using false identities and then deserted them when they were transferred to another barracks. Many girls were abandoned while pregnant. Most have been forced to raise their children as single mothers without any means of support.

Interviewers also heard stories of policemen and soldiers pressurising women to marry them or enter into sexual relations, sometimes with the false promise of marriage. While one could argue that such marriages or sexual relations took place through mutual consent, given the prevailing circumstances at the time, it would have been impossible for many women to give their consent freely or refuse “marriage” offers. For instance, in Kalikot a witness described to researchers how her friend was forced to marry a soldier who then deserted her. She reportedly gave birth to a daughter from the “marriage” and is living in dire poverty. Sometimes, a woman who refused to enter into marriage was raped.

CPN-M cadres

A number of factors may have contributed to the relatively low number of incidents of alleged sexual violence perpetrated by CPN-M cadres. First, sexual violence against civilians was against the norms and ideology promoted by the CPN-M and counter to their policy of recruiting women during the “people’s war”. Second, Maoists relied heavily on civilians for the supply of recruits, food, shelter, military intelligence and the legitimacy of the conflict itself. Committing acts of sexual violence against civilians was accordingly counter-productive to war tactics as well as recruitment. Furthermore, information from the field reveals that in many cases, Maoists took actions against their cadres for their alleged involvement in sexual violence against civilians or their female cadres. Research findings corroborate CPN-M leaders’ claims about the existence and operation of a code of conduct formulated for the combatants to impose discipline in cases of sexual misconduct.¹⁰¹ Although the nature and due process of such actions are

¹⁰¹ See for example, S. Gautam, A. Banskota and R. Machanda, “Where There are No Men: Women in the Maoist Insurgency in Nepal,” in *Understanding the Maoist Movement of Nepal*, ed. Dipak Thapa, Kathmandu: Martin Chautari, 2003, pp.93-124. “Morality, Sexuality and the People’s War” Women in the Maoist Insurgency in Nepal, p. 235.

questionable, it seems that the CPN-M leadership adopted a policy to discourage sexual violence.

Nevertheless, several reports suggest that some young female Maoist cadres were forced to have sex with male cadres. For instance, a girl who joined the CPN-M in 2000 after being intimidated into doing so stated that she was raped by a cadre of her own party in 2004. She has now given birth and is raising the child on her own.¹⁰²

Another girl who was forcibly recruited by the CPN-M and was later raped by her own party cadres described forced sexual activities within the party:

“The CPN-M recruited me against my will. I stayed with them for one and a half years. There used to be many sexual activities in the party. Many used to do such activities at their own will while some had to do it under threats or after persuasion. I was forced to have sexual relations with two Maoist boys. I was given medicine after they had sex with me. They threatened me not to tell anyone and that the consequences would be bad for me if I disclosed the incident. After some time, I told about the incident to a brother from my village and later those boys were punished by the party. After that I left the party.”¹⁰³

Findings suggest that poor and single women were sometimes subjected to sexual violence by the CPN-M. One female child health volunteer from the far-western region described how she was raped by CPN-M cadres after her abduction at night. She had to be on medication for two years to treat the physical consequences of rape and she still suffers mental trauma.

Another woman described how her daughter was raped by a young CPN-M cadre:

“In 2001, my five-year-old daughter was raped by a 14-year-old Maoist. We’ve heard that he did that to others too. The whole family of the boy is loyal to the Maoist party and they did not let us live in the village. The rapist came with his

¹⁰² She later disclosed the incident to the party. They decided that as a punishment, the alleged perpetrator should provide the victim with Nepali Rupees 1,000 per month until the child is six years old. The victim feels that although the party made this decision, it is insufficient and that a proper judicial process should follow to enable her to receive a share of the perpetrator’s property.

¹⁰³ Key Informant Interview (Female), Western Region.

*mother to kill my daughter so we were forced to move. My daughter's physical condition hasn't improved yet. We went to Pokhara for her treatment. My daughter still experiences bleeding while defecating."*¹⁰⁴

The study team received allegations from medical personnel and other sources that CPN-M cadres sometimes forced pregnant female cadres to undergo abortions, and that these abortions were often carried out in an unsafe manner. In one case, a nurse reported that a CPN-M cadre beat a girl cadre and her mother for refusing to terminate a pregnancy. In another incident, a woman in Dolakha reported that she witnessed a forced abortion in a CPN-M camp in which a pregnant cadre was forced to run until she bled in an apparent attempt to provoke a miscarriage.

The research team also documented one case of rape of a woman held in detention by the CPN-M and received some other anecdotal statements regarding rapes in CPN-M detention. However, these could not be independently confirmed.

Unidentified third parties

In Bardiya district, women reported that masked armed men raped several girls at night during the conflict whilst they were observing *chaupadi*. In this case, the perpetrators remained unidentified. Reports were also gathered of rape of girls by third parties pretending to be CPN-M cadres or security forces.

¹⁰⁴ Key Informant Interview (Female), Western Region.

4

Impact on women's health

Our research findings show that in addition to sexual violence experienced during the conflict, and sometimes as a direct consequence, women have suffered unwanted pregnancies, gynaecological problems and psychosocial problems. These problems have been exacerbated by their difficulties in accessing health care. Women found it more difficult to access health services during the conflict because they were afraid to travel, because there was a lack of transportation, or simply because there was a shortage of health services or medicine (including access to midwives). There were often no doctors or health professionals in district health posts because they feared that they could be targeted by the security forces for possibly treating Maoists. Maternal mortality rates increased during the conflict because women often had no other choice but to give birth at home. Inadequate reproductive healthcare services, including prenatal support and emergency obstetric care, puts women and girls at particular risk.

The situation of many victims/survivors remains precarious as they continue to suffer from the physical, mental and social consequences of sexual violence. The majority have not been able to access or have been denied any form of support or recognition of the harm they were forced to endure.

International human rights law and international humanitarian law offer important, complementary protection for women's health in armed conflict. The right to the enjoyment of the highest attainable standard of physical and mental health or "the right to health" is the right to an effective and integrated health system,

encompassing health care and the underlying determinants of health, such as adequate sanitation, safe drinking water and health education.¹⁰⁵ Under this right, Nepal must ensure that health care be accessible to all, including children, older persons, women, people with disabilities, and other individuals and groups who are marginalised and vulnerable, including during periods of armed conflict.¹⁰⁶

Nepal's Interim Constitution reflects this obligation by guaranteeing a fundamental right to basic healthcare services.¹⁰⁷ In addition, the link between violence against women and the right to health is well recognised.¹⁰⁸ Physical and psychological harm or suffering has a negative impact on a woman's enjoyment of the right to health. Under Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Nepal is required to enact and enforce laws and policies that protect women from violence and abuse and provide for appropriate physical and mental health services.¹⁰⁹ Nepal is also required to prevent, investigate, and prosecute such violence "*whether it is perpetrated by State actors or private persons.*"¹¹⁰ Survivors of such violence have the right to "*adequate reparation and*

¹⁰⁵ ICESCR, art. 12. The right to health is also recognised in International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), art. 5 (e) (iv); CEDAW, arts 11 (1) (f), 12 and 14 (2) (b); Convention on the Rights of the Child (CRC), art. 24; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 28, 43 (e) and 45 (c); and the Convention on the Rights of Persons with Disabilities (CRPD), art. 25.

¹⁰⁶ ICESCR, art. 2(1), 3 and 12; CRC, art. 24. UN Doc. A/HRC/27 (October 2006), para. 63. The right to health contains a number of core obligations of immediate effect, including ensuring "the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups." UN Doc E/C.12/2000/4 (August 2000), para. 43(a). Committee on Economic, Social and Cultural Rights, General Comment No. 14, paras. 10 and 12; ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, ICJ Reports 2004 (affirming the application of human rights law in situations where international humanitarian law is applicable).

¹⁰⁷ Interim Constitution, art. 18. The CPA, art. 3.9, also states that citizens should enjoy the right to health, and the government should adopt policies to that effect.

¹⁰⁸ See Committee on the Elimination of Discrimination against Women, General Recommendations 19 (1992) on violence against women and 24 (1999) on women and health; see also, OHCHR/WHO Fact Sheet on the Right to Health, No. 31, 13. "Gender-based violence, or violence against women (VAW), is a major public health and human rights problem throughout the world. VAW has profound implications for health but is often ignored." WHO, <http://www.who.int/gender/violence/en/>.

¹⁰⁹ While CEDAW does not explicitly use the phrase "violence against women", in 1992 the CEDAW Committee adopted General Recommendation 19 on Violence Against Women, thereby reading gender-based violence into several of the treaty's substantive provisions. See arts. 12 and 14(2)(b) regarding women's right to health.

¹¹⁰ OHCHR/WHO Fact Sheet on the Right to Health, No. 31, 13. Nepal is a party to the following human rights instruments: International Covenant on Civil and Political Rights (ICCPR) (1966) and its Optional Protocols (1966 and 1989); ICESCR (1966); ICERD (1965); CEDAW (1979) and its Optional Protocol (1999); Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984); CRC (1989) and its Optional Protocols (2000) and the Optional Protocol to the CRC (CRC-OP-AC) on

rehabilitation that cover their physical and mental health."¹¹¹ This can include counseling and other assistance to victims of physical and sexual violence and other traumatizing experiences related to armed conflict, particularly for women and children, and should include information on these and other mental health services.

Numerous aspects of international humanitarian law address the protection of the right to health in armed conflict; they concern the protection of the right to be given care and the protection of essential services to maintain health.¹¹²

Tailored standards exist for IDPs. In this regard, the UN Guiding Principles on Internal Displacement require special attention to "be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses."¹¹³ The needs of IDPs are specifically addressed in the CPA which provides for relief and rehabilitation for people displaced by the conflict.¹¹⁴

Access to health care

The diverting of human and financial resources away from public health services during periods of conflict can affect the physical health and psychosocial well-being of women and girls in very particular ways. *"Women are not only the victims of general violence and lack of healthcare – they also face issues specific to their biology and social status."*¹¹⁵

the involvement of children in armed conflict, the First Optional Protocol to the CRC (CRC-OP-SC) on the sale of children, child prostitution and child pornography; the CRPD (2006). Too often it is forgotten that all of the provisions apply to women, and not simply the obligations that specifically target women.

¹¹¹ OHCHR/WHO Fact Sheet on the Right to Health, No. 31, 13. See also CESCR, General Comment 14, UN Doc. E/C.12/2000/4, para. 51.

¹¹² Perrin, P., "The Right to Health in Armed Conflict" at www.swisshumanrightsbook.com/SHRB/shrb.../09_453_Perrin.pdf, See also Protocol Additional I to the Geneva Conventions (1977), arts 12(1) and 15(1); Protocol Additional II to the Geneva Conventions (1977), art. 11; Fourth Geneva Convention, art. 19. Common article 3 of the Geneva Conventions for the protection of war victims (1949); Additional Protocol I (1977) relating to the Protection of Victims of International Armed Conflicts, art. 75 (2) (a); Additional Protocol II (1977) relating to the Protection of Victims of Non-International Armed Conflicts, art. 4 (a).

¹¹³ UN Guiding Principles on Internal Displacement, principle 19(2) (1998) at http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html.

¹¹⁴ Comprehensive Peace Agreement, art. 5.2.4.

¹¹⁵ UNIFEM, "Women, War and Peace" (2001), p. 33.

Abortion is legal in Nepal up to 18 weeks of pregnancy in the case of rape or incest.¹¹⁶ However, during the conflict, women had very limited access to reproductive health care. Women told researchers that it was not easy to go to the district hospital because of the security situation, while at the same time village health posts lacked medicine and trained staff.¹¹⁷ Victims of rape repeatedly stated that they did not seek medical care as they did not know where to go for treatment or even if they should seek medical help at all.¹¹⁸ Community members and social workers related several stories of how women and girls used unsafe methods to terminate unwanted pregnancies and in some cases, died as a result. For instance, in Accham district, interviewers were told that a rape victim bled to death after she inserted a sharp metal rod inside her vagina in an attempt to terminate her pregnancy by an RNA soldier.

Sexual and reproductive health problems

Research indicates that a large number of victims still suffer from gynaecological problems following rape, which has led to severe pain and suffering, and many being unable to enjoy a fulfilling sex life or conceive. A 23-year-old woman who was violently gang raped by RNA soldiers in front of her daughter told us that she still experiences white discharge and acute pain when urinating. She is also now too afraid to enter into a sexual relationship with her husband. A medical doctor who accompanied the research team confirmed that the woman was suffering from a sexually transmitted infection. A psychosocial counsellor in the team reported that the woman is suffering from depression and needs psychosocial support to rebuild her feelings of trust, safety and control – feelings which are often lost after an assault.¹¹⁹ Sadly, these resources are rarely available to most victims.

Psychosocial problems

"I get nightmares all the time. I see people coming and raping me. I am still afraid that something similar will happen again. The men who raped me live in a house

¹¹⁶ Nepal Civil Code (Muluki Ain), Chapter on Homicide, Section 28(b)(2).

¹¹⁷ Many healthcare facilities were destroyed during the conflict and health professionals were displaced.

¹¹⁸ In some cases, victims reported that the CPN-M cadres came to their houses and gave them "medicine" to prevent pregnancy. This was especially true in areas over which Maoists exercised a strong influence. In many cases, victims reported that Maoists treated them with the help of their medics. However, in majority of the cases, rape victims remained silent and were unable to access medical and other care, as a result of which they continue to experience health problems.

¹¹⁹ See also above, Rise in fear and suspicion.

close to mine. They could come at any time and intimidate me as they want to settle the case out of the court. I've been receiving threats from them that the same thing can happen to me if I do not settle the case out of the court.”¹²⁰

Many survivors of rape reported that they experience fear, anger, distress, stress, weakness, aggression, guilt, shame, agitation and recurring nightmares. For some, the continued lack of security and threats from the perpetrators to keep silent has led to added mental trauma. Some victims of rape expressed suicidal tendencies. A girl who became pregnant from rape by Maoists described her emotions:

“I used to feel suicidal in the beginning. But I thought, if I kill myself, the baby inside my belly will also die. I am living because of the love for my baby.”¹²¹

Mental health issues also arise in the context of disappearances. When a family member disappears, the family suffers psychosocial consequences. Most people subjected to enforced disappearance in Nepal were men, so that the families left behind are mainly composed of women and children. The peculiar characteristics of a disappearance, in which the final whereabouts of the victim are still unknown, bring extra problems to the mourning process.

The inability to finalise the mourning period is a frequent topic among those who still do not know the whereabouts of a family member. To start a mourning process it is necessary to be certain that the person is dead. Uncertainty can make it more difficult for the family to accept the loss of the family member. During the research some families of the disappeared said that they were under pressure from other family members or community members to perform the funerary rites for their loved ones. However, residual doubts about what happened to the family member leaves space open to imagine a different outcome or to maintain denial. To be forced to acknowledge the death of a disappeared family member produces mixed feelings of fear and guilt that feed into the inability to close the mourning circle.

“My house knows no peace. No one is happy in my family. My brother used to look after the household. My studies were hampered for two years. My father

¹²⁰ Key Informant Interview (Female), Saptari.

¹²¹ Key Informant Interview (Female), Okhaldhunga.

became crazy because of the incident. He always went out of the house; we couldn't keep him inside the house. My mother fell ill. She keeps weeping and looking at the photograph of her son. Even if we are her five children, she doesn't call us children. I cannot even put red tikas on my brothers' foreheads, nor do I put it on myself. I haven't been able to be happy in any festivals. If he was dead we would have reconciled with our mind that he is no more. But we don't know about his condition, whether he is alive or dead. He visits each of my dreams even now. I cannot talk about him for a long time. I'll fall unconscious. We had to sell our house in auction. I've lost my brother and I fear to become an orphan. Whenever I attend a meeting or a programme my mother asks me, 'Is your brother with you?'"¹²²

In addition to the pressure to perform funerary rites, families of the disappeared sometimes face discrimination from the communities in which they live. This discrimination can take the form of exclusion from social and religious rituals. A certain amount of blame and suspicion is also present in communities due to the amount of time that women have to spend out of their houses in their pursuit of information regarding disappeared family members.

"We're excluded in cultural functions. Excluded in worshipping and in participating in last rites ceremonies."¹²³

"My husband is disappeared, while we go out to look for him, we're accused of going out to enjoy ourselves. When women go out of the house it is perceived in a suspicious way."¹²⁴

The impact on mental health has been recognised by the Special Rapporteur on Torture, the UN Working Group on Enforced or Involuntary Disappearances, as well as the Human Rights Committee in cases under the Optional Protocol to the ICCPR. Both these bodies have identified relatives of the disappeared as being subject to torture and cruel, inhuman or degrading treatment in their own right, due to a variety of factors, not least the way that the authorities treat their requests for information about the disappeared.

¹²² Key Informant Interview (Female), Achham.

¹²³ Focus Group Discussion (Female), Bardiya.

¹²⁴ Focus Group Discussion (Female), Bardiya.

5

Towards a new Nepal: the role of women

Traditional and cultural practices frequently present formidable obstacles to the inclusion of women in peace processes or post-conflict governance unless a formal mechanism, such as a quota system, is put in place to counter these practices.¹²⁵ Lessons from other countries demonstrate that although women often play a formative role in informal, community level peace-building activities, their contributions are rarely acknowledged by those involved in formal, centralised processes and as a result women are frequently excluded from these processes.¹²⁶ As found by UNIFEM, “[o]nce . . . the official negotiations start, you have to be able to sit at the table and speak their language. Often women are not trained or given the chance.”¹²⁷ While the Beijing Platform for Action calls for a 30 per cent minimum representation of women in decision-making bodies and Security Council resolution 1325 urges the appointment of women in decision-making bodies and peace-processes, women still remain chronically under-represented.

The decision-making process in Nepal is consistent with the global situation. In the words of the then Special Representative of the Secretary-General of the United Nations in Nepal, Ian Martin:

¹²⁵ UNIFEM, “Women, War and Peace,” (2001) p. 80.

¹²⁶ Meintjes, S., A. Pillay and M. Turshen (eds), “The Aftermath: Women in Post-Conflict Transformation” (2001), p. 10: “Women who work for peace at the grassroots level, often at the peak of atrocities and instability, create a sense of local community, but they rarely reach national prominence.”

¹²⁷ UNIFEM, “Women, War and Peace” (2001), p. 79.

“At all the political negotiating tables I have seen in Nepal during the peace process, not once have I seen a woman at the table. So far in the peace process, decisions are being made by men for women, but women are not part of the decision-making process even in matters that directly relate to their lives.”¹²⁸

The negotiations between the political parties in the lead-up to the 12-point Letter of Understanding of November 2005 and subsequent negotiations for the formation of an interim government were characterised by the absence of women. Various mechanisms formed during the peace negotiations similarly failed to ensure the participation of women. A National Monitoring Committee formed to monitor the implementation of the 12-point Letter of Understanding only had two women among its 31 members.¹²⁹ The Interim Constitution Drafting Committee, initially made up of six men, was only expanded at a later date to include four women (among its 16 members after two expansions) after a campaign led by women’s organisations.¹³⁰ Similarly, women’s organisations exerted pressure for women’s participation in the peace negotiations and the CA. These women’s organisations legitimised their demands for greater participation of women in the political, public sphere by using international tools such as the Beijing Declaration and Platform for Action (1995) and UN Security Council resolution 1325 (2000). With the backing of UN bodies such as UNFPA and UNIFEM and the donor community, they tried to influence the process in the decision-making arenas as well as by playing the role of the link between the decision-making elites and wider society.

Partly as a result of this external pressure, the CPA contained important provisions regarding gender, but so far this has resulted in little change or benefit for women.

As one respondent said:

“[i]t is written in the Interim Constitution about 33 per cent women quota but still many organisations and political parties have not included 33 per cent of women. But our demand is for 50 per cent based on the population, in every

¹²⁸ See “Implementing commitments to women’s equal participation,” Ian Martin, SRSG, United Nations Mission in Nepal (UNMIN), 2007-12-29 http://www.unmin.org.np/?d=activities&p=activity_detail&aid=50.

¹²⁹ See <http://peace.gov.np/eng/programs.asp?info=NMCC&id=12> for details on the National Monitoring Committee. (Note this Committee has never functioned effectively.)

¹³⁰ See <http://peace.gov.np/eng/programs.asp?info=ICDC&id=15> for details on the Interim Constitution Drafting Committee.

community and at every level. Marginalised women, unaware women and illiterate women should be heard by the local level which would help in making them aware about many things.”¹³¹

Another emphasised that representation should be at all levels, citing the need for “[p]roportional representation of women in each level of governance.”¹³² Elsewhere, an individual called for women to be “given opportunities in participating in social and political events.”¹³³ Yet another respondent called for “participation in decision-making and policy-making” as well as “leadership in different organisations.”¹³⁴

Interviewees also expressed the view that both men and women must be involved in any efforts to eliminate gender violence:

“It is not the solution to make only women aware about the gender violence. It is necessary to educate both men and women to solve this issue. There should be interaction programmes among men and women together about issues like gender violence.”¹³⁵

In October 2010, the Government adopted the National Action Plan on 1325 and 1820, and in November, the National Action Plan on Human Rights. Both these documents include benchmarks and indicators to measure progress in a range of areas covered by this report, including gender-based discrimination and violence. These indicators will serve as important advocacy tools to monitor the Government’s commitment, measured through actual change on the ground.

Gender-Based Discrimination and Violence

Nepal is party to seven of the nine core international human rights treaties and the four Geneva Conventions.¹³⁶ These form a framework prohibiting, among other

¹³¹ Key Informant Interview (Female), Morang.

¹³² Key Informant Interview (Female), Dadeldhura.

¹³³ Key Informant Interview, Palpa.

¹³⁴ Key Informant Interview (Female), Kailali.

¹³⁵ Key Informant Interview, (Female), Bardiya.

¹³⁶ Supra note 110. Nepal has yet to ratify Additional Protocols I and II of the Geneva Conventions (1979); the Optional Protocol to CAT (2002); the International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) (1990); and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); and the Rome Statute of the International Criminal Court (ICC) (1998). In 2007, the Committee against Torture urged Nepal to: (a) Consider making the declaration under articles 21

things, gender-based violence against women at all times. In this regard, Nepal must also ensure that violations are investigated, with suspected perpetrators brought to justice; fully accessible complaint mechanisms are available to women and girls, regardless of whether the abuse occurred at the hands of the state, an armed group or private individual; gender-sensitive training is provided for all military personnel and those involved in the conflict; and specialised counseling and support services are created and made available for women victims of armed conflict.¹³⁷ Within the framework of CEDAW and the Special Rapporteur on Violence against Women's mandate, the concept of the "due diligence standard" has been developed to address State responsibility for violence perpetrated by private actors in both public and private arenas. The "due diligence standard" *"imposes upon the State the responsibility for illegal acts that are not directly committed by the State or its agents, but by private actors on account of State failure to take sufficient steps to prevent the illegal acts from occurring. Likewise, once an illegal act has occurred, the State's inaction and failure to investigate prosecute or punish the act perpetrated by a private actor amounts to neglect of the State obligation to be duly diligent."*¹³⁸ The recognition that states have a responsibility to protect individuals from abuse by non-state actors is of particular relevance in the context of Nepal.¹³⁹ Although this approach has practical limitations, especially in conflict

and 22 of the Convention (to accept individual complaints); (b) Consider becoming party to the Optional Protocol to the Convention (to allow independent monitoring of detention establishments); (c) Consider becoming party to the Rome Statute of the International Criminal Court; (d) Consider becoming party to Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). The Special Rapporteur on torture in his report after his visit to Nepal in 2005 called on the Maoists to stop torture and other cruel, inhuman or degrading treatment or punishment and to stop the practice of involuntary recruitment, in particular of women and children. See UN Doc E/CN.4/2006/6/Add.5, para. 34.

¹³⁷ CEDAW, General Recommendation No. 19 (11th Session, 1992), para. 7(c). See also Amnesty International, *Making Rights a Reality: Violence against Women in Armed Conflict* (Index Number: ACT 77/050/2005), p. 14-15.

¹³⁸ 15 Years of the United Nations Special Rapporteur on Violence against Women, its causes and consequences (1994-2009): A Critical Review, A/HRC/11/6/Add. 5, para. 66 (2009). The report further notes that "[t]he due diligence standard has long been part of international law and was incorporated into general Recommendation 19 of CEDAW, and later DEVAW, to expand State accountability to include VAW by private actors (in addition to State actors) in the private or public sphere, thus placing upon the State the duty to prevent, investigate, punish and provide compensation for all acts of VAW wherever they occur."

¹³⁹ Human Rights Committee, General Comment 31, The Nature of Legal Obligations Imposed on States Parties to the Covenant (Art. 2) (2004), UN Doc. CCPR/C/21/Rev. 1/Add. 13. See also CEDAW, General Recommendation No. 19 (1992), which states: "[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." (para. 9).

situations when state capacity is restricted, it nevertheless provides a vital way of bringing governments' legal obligations into clear focus and aims to use the power of international law to bring about change wherever necessary.

In relation to this, the Special Rapporteur on violence against women emphasises that there remains a significant gap between the international community's recognition that those who commit rape and other gender-based violence are legally liable and must be punished, and the political will of states to enforce international humanitarian and human rights law and insist that those who violate it are held accountable.¹⁴⁰ Sadly, it is very often not the lack of legislation that ensures that female victims of human rights violations are rarely guaranteed an effective remedy. Rather, the problem lies in the lack of implementation of existing law by police and prosecutors, compounded by a lack of an integrated approach to support victims, and structural problems in the legal system.

Discrimination against women

The principle of non-discrimination is one of the cornerstones of international human rights law. Freedom from discrimination, including on the grounds of sex, is codified in the UN Charter, binding all UN member states, and is a key principle in all human rights treaties.¹⁴¹ Non-discrimination on the basis of sex is also firmly grounded in international humanitarian law and international criminal law.¹⁴²

Discrimination must be eliminated both formally and substantively. Whereas formal equality seeks equal treatment, the concept of substantive equality acknowledges that there is no neutral structure, and that structural discrimination and privilege embedded in institutions must be challenged.¹⁴³ Removing discrimination requires both refraining from discriminatory acts and practices as well as taking "temporary special measures" to achieve equality for the target

¹⁴⁰ See e.g. ICCPR, art. 2(3) (guaranteeing the right to an effective remedy). Report of the Special Rapporteur on violence against women, its causes and consequences, Report on the Integration of the Human Rights of Women and the Gender Perspective, U.N. Doc. E/CN.4/2001/73 (January 2001), p. 5.

¹⁴¹ UN Charter, art. 55 (c); CEDAW; Universal Declaration of Human Rights (1946), art. 2; ICCPR, arts. 2, 26; ICESCR, arts. 2(2), 3; CRC, art. 2. Sex or gender discrimination are terms that are used interchangeably, albeit having different meanings. "Sex" refers to a person's biological or anatomical identity as male or female. "Gender" refers to the characteristics that are culturally associated with maleness or femaleness.

¹⁴² Amnesty International, *supra* note 137, p. 22.

¹⁴³ International Women's Rights Action Watch Asia Pacific (IWRAP), *Addressing Intersectional Discrimination with Temporary Measures*, IWRAP Asia Pacific Occasional Papers Series, No 8 (2006), p. 10.

group who are discriminated against: temporary special measures do not constitute discrimination against the group which is enjoying superior status.¹⁴⁴ Such “temporary special measures” depart from formal equality to achieve substantive equality. Eliminating discrimination in practice means paying attention to groups of individuals who suffer historical or persistent prejudice and therefore goes beyond merely comparing the formal treatment of individuals in similar situations. Concrete strategies to eliminate discrimination against women, including gender-based violence, which is recognised as a form of discrimination that is exacerbated during armed conflict, require not only changes in institutions and laws, but more importantly in cultural practices that create and perpetuate such discrimination. This is particularly important in order to counteract the mistaken perception that the gendered impacts of conflict are cultural or private issues that should not be discussed publicly.

Since the cessation of hostilities, Nepal has made a number of commitments to uphold the rule of law and to ensure the enjoyment of human rights, as formalised within the 2006 CPA. In this regard, the government has put in place some landmark legislative and policy measures that address discrimination. The Interim Constitution, in the fundamental rights chapter, prohibits discrimination on grounds of gender, caste and ethnicity.¹⁴⁵ Women have a new fundamental right: the Interim Constitution provides that no one shall be discriminated against in any way for being a woman.¹⁴⁶ The Three Year Interim Plan (covering the period from 2007 to 2010), which guides all policies of ministries, incorporates as a “priority area” the “inclusion of excluded groups, area and gender in all mechanisms, spheres and processes of development.”¹⁴⁷ Unlike the government’s previous 5-year plan,¹⁴⁸ the current plan identifies inclusion as a strategic pillar for poverty alleviation.¹⁴⁹ On paper, the measures initiated post-CPA by the government to combat gender-based discrimination look very promising. However, challenges remain.

¹⁴⁴ See CEDAW, General Recommendation 25.

¹⁴⁵ The Interim Constitution of Nepal 2007, arts. 13, 18, 19, 20, 21, 28, 30.

¹⁴⁶ *Id.* art. 20.

¹⁴⁷ The Three Year Interim Plan 2007/2008 – 2009/2010, The government of Nepal, National Planning Commission, December 2007, Chapter 4, “Vision, Goal and Strategy of the Interim Plan,” <http://www.npc.gov.np/uploads/plans/20081228112832.pdf>.

¹⁴⁸ The 9th Plan of His Majesty’s Government of Nepal.

¹⁴⁹ *Supra* note 147, Chapter 4.

A number of discriminatory laws in the National Legal Code (*Muluki Ain*) and within the Interim Constitution were amended to equalise the rights of women to property and citizenship.¹⁵⁰ The 11th amendment to the *Muluki Ain* in 2001 rectified many discriminatory legal provisions within the code in areas of property rights, inheritance, and marriage and family affairs. Yet according to the study undertaken by the Forum for Women, Law and Development (FWLD) in 2009, there are still 103 legal provisions within 63 pieces of legislation that discriminate against women. Discriminatory laws are seen in the areas of citizenship and identity documents, property, recognition of women's sexual autonomy, women's economic rights, sexual offences, employment and labour practices, health, family law and court procedures.

In this regard, a Supreme Court decision held that all laws that are discriminatory on the basis of marital status should be amended.¹⁵¹ However, as of November 2010, none of these laws have yet been changed. Among the discriminatory provisions remaining on the statute books are, first, when a mother and father partition their property among their children, a married daughter shall not receive any property,¹⁵² and second, a married daughter will only receive an inheritance from her deceased parents if she has no brother or unmarried/widowed sister to receive the inheritance.¹⁵³

In addition to flaws in laws and policy, cultural practices contribute significantly to the violation of women's rights. Brutal punishments for alleged witchcraft and dowry-related violence (especially in the Tarai region) continue. The Supreme Court has already issued directives and orders to the government of Nepal to take measures to eliminate and regulate such practices. However, the government has so far failed to implement any of these court orders.¹⁵⁴

¹⁵⁰ Under Article 20 of the Interim Constitution, sons and daughters are given equal rights to ancestral property. Historically, property laws in Nepal have only allowed women to inherit ancestral property under exceptional circumstances. Article 8 of the Interim Constitution changes the previous laws on citizenship whereby citizenship could only be obtained on the basis of the father's nationality. Now citizenship through descent can be provided on the basis of either the father or the mother's citizenship certificate.

¹⁵¹ Lily Thapa vs. Prime Minister and Council of Ministers, Decision No. 7588, Ne. Ka. Pa. -2062.

¹⁵² Nepal Civil Code (*Muluki Ain*), Chapter 13 Section 1,1 A.

¹⁵³ *Id.* Section 2.

¹⁵⁴ Cases include: Meera Dhungana (FWLD) vs. HMG/Nepal. Writ No. 131 D.D. 14/12/2006 (2063/8/28). The Supreme Court issued a directive order to amend provisions in line with the principle of equality for punishing the act of accepting dowry and tilak under 493), 494) and 492) of the Social Practice Reform Act 1976; Reshma Thapa et al vs. HMG Nepal. Writ no. 2891/2058, D.D. 2061-4.26. The Supreme Court issued orders to criminalise the act of making allegations of witchcraft.

Affirmative action to address discrimination against women

The CPA envisions a progressive restructuring of the state to resolve “class, ethnic, regional and gender problems existing in the country.”¹⁵⁵ The same language appears in the preamble of the Interim Constitution. Affirmative action is one of the most substantive steps taken by the government to fulfill its commitment to create a discrimination free federal state. The fundamental right to equality in the Interim Constitution allows special provisions to be enacted for the “protection, advancement and empowerment” of women and other marginalised groups.¹⁵⁶ The effect of this constitutional provision has been that state legislation and policy now provide for 33 per cent of public offices to be reserved for women.¹⁵⁷ The Interim Plan goes further to consolidate inclusion through policy by stating that “measures will be taken to ensure that 33 per cent of the beneficiaries of the programmes run by ministries are women.”

However, taking the judicial service sector as an example, which includes public prosecutors under the office of the Attorney General, staff of the courts and judges, the reality is that the 33 per cent requirement for women’s representation is not met. Currently, there are five female judges out of 264 judges. Among the 250 public prosecutors throughout Nepal, only seven are women. Prior to the 33 per cent reservation in the Civil Service Act, there were five female public prosecutors, and the additional two were recruited under an affirmative action policy.¹⁵⁸ Some of the underlying reasons why women are severely underrepresented in the judicial sector include their lack of access to information about employment opportunities in the judicial sector and challenges they face with regard to taking the civil service exams, such as the high cost of study tools and lack of time for preparation in light of household commitments. Within public offices, there is some level of resentment about quotas for women, as these quotas are perceived as giving women undue advantage and special treatment. Additionally, many of the women who enter civil service employment through the quota system are from economically privileged

¹⁵⁵ CPA 2006, Preamble and art. 3.5.

¹⁵⁶ Interim Constitution of Nepal 2007, art. 13.

¹⁵⁷ Article 65 of the Interim Constitution requires a 33 per cent representation of women in the Constituent Assembly. The Election Act and the Local Self Governance Act also provide for a 33 per cent quota for women. Section 7 of the Civil Service Act requires that 33 per cent of the positions to be filled within the civil service are reserved for women.

¹⁵⁸ Key Informant Interview, Office of the Supreme Court and Office of the Attorney General, Kathmandu.

backgrounds – thus, in effect, the affirmative action designed to uplift underprivileged and disadvantaged groups is not effective in doing so.¹⁵⁹ Nevertheless, given that the 33 per cent reservation system is still new, its success must continue to be monitored.

Violence against women

International human rights law imposes a range of obligations designed to protect women and girls from violence in peacetime and during armed conflict. Of particular relevance is the International Covenant on Civil and Political Rights (ICCPR) which is required to be applied to women without discrimination.¹⁶⁰ Specific articles guarantee the right to life and the right to be free from torture and cruel, inhuman or degrading treatment, as well as slavery and servitude. These rights are all non-derogable, meaning that they cannot be suspended under any circumstances, including during armed conflict. Violence against women has been recognised as a form of discrimination seriously inhibiting women’s ability to enjoy fundamental human rights and freedoms under international human rights law.¹⁶¹ This remains the case whether the violence is physical, sexual or psychological in nature and regardless of whether it occurs in the family, the general community, or is perpetrated or condoned by the state.¹⁶² Forms of violence against women encompass, but are not limited to: battering, sexual abuse, dowry-related violence, marital rape, female genital mutilation, sexual harassment, trafficking, forced prostitution and rape.

The 1993 UN Declaration on the Elimination of Violence against Women defines violence against women as “[a]ny act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.”¹⁶³ Gender-based violence has been further defined as “violence directed against a woman because she is a woman or which affects women disproportionately.”¹⁶⁴

¹⁵⁹ Key Informant Interview, Kathmandu.

¹⁶⁰ Human Rights Committee, General Comment 28. <http://www1.umn.edu/humanrts/gencomm/hrcom28.htm>.

¹⁶¹ CEDAW, General Recommendation No. 19 (1992).

¹⁶² *Id.*, art. 2.

¹⁶³ UN Declaration on the Elimination of Violence against Women (1993), art. 1.

¹⁶⁴ CEDAW, General Recommendation No. 19 (1992).

In conformity with the commitment in the CPA to end and prohibit all types of violence against women, the government has enacted some significant legislative measures. The Interim Constitution prohibits “physical, mental or any other form of violence” against women.¹⁶⁵ The government declared 2010 as a year against gender-based violence and developed a National Plan of Action coordinated and monitored by a high level ministerial committee.¹⁶⁶ The five-year strategic plan of the National Women’s Commission deals extensively with strategies to combat violence against women.

In 2009, the Domestic Violence (Offence and Punishment) Act came into force, which commits the state to work actively to prevent domestic violence and to investigate and punish any acts of domestic violence that do occur. While formally this law complies with the international legal obligation of due diligence to prevent, investigate and punish abuses of non-state actors, only with time will it be clear if the law is implemented in practice. More specifically, this Act has been criticised in terms of content and for its weak implementation. Several problematic areas of the Act have been identified. The first is that the Act does not provide for the alleged perpetrator of such violence to be held in custody while the charges are investigated.¹⁶⁷ In Nepal, a person can only be held in custody while charges against him/her are investigated if the person has been charged with committing a crime that will be punished by a sentence of three years or more in prison as provisioned for in the laws. The maximum sentence that an Act of domestic violence can get is a prison sentence of six months. Therefore, detention *ex ante* is not possible if charged under this Act. Moreover, since domestic violence is not in the list of crimes that the state prosecutes under the State Cases Act, the alleged offender does not have to pay bail money to be released. The case is treated like a civil case and so the alleged offender is given a date by the court in which he/she has to appear for hearing. An outstanding problem with this Act is that despite its supplementary regulations, the procedures on how cases are to be brought forward are unclear.

¹⁶⁵ Interim Constitution of Nepal 2007, art. 20.

¹⁶⁶ Joint UN submission for the UN compilation report: United Nations Country Team (UNCT Nepal Report for Universal Periodic Review – Nepal Tenth session, 24 January – 11 February 2011.

¹⁶⁷ Domestic Violence (Offence and Punishment Act) 2009 section 6 provides that if the court has any reason to believe, on the basis of preliminary investigation of the complaint, that the victim needs immediate protection, it may issue orders to the parties to make arrangements to live separately but there is no mention of ordering the incarceration of the perpetrator during the course of investigation.

What would make the implementation of this Act more effective is if domestic violence is put under the list of crimes that the State prosecutes under the State Cases Act. In practice, if a person is charged with a crime that falls under this Act then it is more likely that the alleged offender is kept in custody during the investigation of the case. In practice almost all criminal cases take over a year to be resolved by the courts and claims brought under this Act are no exception to this procedural delay. In effect, this Act seems to do very little to protect women from immediate harm posed by perpetrators.

Second, victims have the option of filing claims under the Act to three different bodies: the National Women's Commission, local bodies or to the police.¹⁶⁸ Most women go to the police. However, the police, instead of filing charges, often initiate mediation themselves. It is not uncommon to see women who have been forced into mediation come back later with renewed complaints of domestic violence.

Third, cases of domestic violence are not prosecuted by the state. Exclusion from the State Cases Act list (which lists the crimes prosecuted by the state) means that women victims have to find their own lawyers or rely on legal aid. This deters women who do not have access to resources from bringing forward claims of domestic violence. Moreover, as of November 2010, no cases filed under the Domestic Violence Act have reached the stage of judgment.

Sexual violence, including rape

The issue of sexual violence is also of relevance to both the conflict and the daily lives of Nepali women. Sexual violence has been defined by the International Criminal Tribunal for Rwanda in the *Akayesu* case as "any act of a sexual nature which is committed on a person under circumstances which are coercive."¹⁶⁹ Rape and other forms of sexual violence, and reproductive crimes such as forced abortion and forced sterilization, have been recognised as war crimes and crimes

¹⁶⁸ Id. section 6.

¹⁶⁹ Prosecutor v. Jean-Paul Akayesu, Judgment, Case No. ICTR-96-4-A, 1 June 2001 Judgment (Akayesu Appeals Judgment), para. 598.

against humanity in the Rome Statute of the International Criminal Court.¹⁷⁰ The CEDAW Committee has laid out particularly detailed guidelines for the protection of women during armed conflict, making clear that gender-based violence which “impairs or nullifies the enjoyment by women of . . . the right to equal protection according to humanitarian norms in times of international or internal armed conflict”¹⁷¹ is prohibited by CEDAW.

Moreover, rape and other comparable severe acts of violence committed by parties to an internal or international armed conflict are firmly established as constituting torture under international law.¹⁷² The identification of rape as torture under particular circumstances underlines the seriousness of the crime and the importance of an effective state response.

One major obstacle to bringing forward cases of rape is the ambiguity around the 35 days statute of limitation. In spite of a June 2008 Supreme Court judgment

¹⁷⁰ The Rome Statute codifies the understanding that sexual violence is not an inevitable by-product of conflict, but is a serious crime when it is widespread and systematic. Article 7(1)(g) defines sexual violence under crimes against humanity as “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.” A body of jurisprudence has and is continuing to be developed in this area. Between the ICTR, ICTY and the Special Court for Sierra Leone, “sexual violence in armed conflict can and do constitute or form part of different crimes”, as per the following:

- (a) rape can constitute rape as crime against humanity and as war crime;
- (b) rape can constitute torture as crime against humanity and as war crime;
- (c) rape and/or other sexual violence can form part of genocide in that it can constitute an act causing serious bodily or mental harm to members of the targeted group;
- (d) rape and/or other sexual violence can form part of persecution and enslavement as crimes against humanity; and

(e) sexual violence can form part of outrages upon personal dignity and inhumane treatment as war Crime, Review of the Sexual Violence Elements of the Judgments of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone in the light of Security Council Resolution 1820, para. 54, 2009.

¹⁷¹ CEDAW, General Recommendation No. 19 (1992), para. 7(c).

¹⁷² Raquel Marti de Mejia v. Peru, Case 10.970, Report No. 5/96, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.91 Doc 7 at 157 (1996); Aydin v Turkey, judgment of 25 September 1997 (Application 57/1996/676/866); European Court of Human Rights, para. 86. “The contemporary understanding of rape and other sexual abuse by or with the consent or acquiescence of the state or by organized armed groups is therefore that such abuse constitutes torture or (in the case of certain forms of sexual abuse) ill-treatment. Furthermore, the Special Rapporteur on violence against women, and other international experts, have argued that in certain circumstances violence against women by private individuals, such as domestic violence, should also be considered a form of torture when it reaches the requisite level of severity and when the state fails to exercise due diligence to prevent and punish it.” Amnesty International, *supra* note 137, p. 11. See also, Report of the Special Rapporteur on violence against women, its causes and consequences (1996), UN Doc. E/CN.4/1996/53, paras. 42-50.

ordering the government to extend the time limit contained in the National Legal Code (*Muluki Ain*), this change has not yet been put in place.¹⁷³ This requirement places significant “substantive and procedural pressure upon women and girls’ equal access [to] courts and to exercise of their rights to equality, security, dignity, and self-worth and, hence, enjoyment of their fundamental freedoms.”¹⁷⁴ If one considers that redress for the crime of rape is an indication that measures the effectiveness of women’s access to justice, then the current system is failing women.

¹⁷³ Advocate Sapana Pradhan Malla v. Government of Nepal Ministry of Law and Parliamentary Affairs et al. Writ No. 3393. 2065

¹⁷⁴ Sellers, P., “The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as a Means of Interpretation” (2008), p. 4.

6

Accessing justice and obtaining remedies

Accessing justice and obtaining effective legal remedies are crucial elements in the protection of human rights.¹⁷⁵ As stated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, “[v]ictims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.” If justice systems are discriminatory by not ensuring equal access to justice for all, those who are in vulnerable and marginalised situations become even more vulnerable and marginalised.

International law requires Nepal to ensure the right to access justice and fair and impartial proceedings, as well as to provide proper assistance to victims seeking access to justice.¹⁷⁶ In addition, appropriate judicial and administrative

¹⁷⁵ Standards include the Universal Declaration of Human Rights; ICCPR; CAT; CRC; ICERD; CEDAW; ICPPED; Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Declaration on the Protection of All Persons from Enforced Disappearance; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Guidelines on the Role of Prosecutors; Declaration on the Elimination of Violence against Women; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty; Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.

¹⁷⁶ According to the UN Basic Principles, states are required to ensure that their domestic law is consistent with their international legal obligations by . . . “(b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to

mechanisms must be established to allow for claims of rights violations to be made at the national level.¹⁷⁷ When the violation is a gross violation of international human rights law or a serious violation of international humanitarian law, the victim must have “equal access to an effective judicial remedy.”¹⁷⁸

Access to justice: obstacles and challenges

When it comes to gender-based violence, access to justice is a challenge, and in a context of conflict even more so. At a global level, UNIFEM has documented protection and support for female survivors of violence in the context of conflict. Access to protection, services and legal remedies has been described as “woefully inadequate”, making it “nearly impossible for women to seek redress from government entities.”¹⁷⁹ Until procedures and mechanisms to investigate, report, prosecute and remedy violence against women during conflict are strengthened, crimes against women will continue.

The findings based on research conducted across Nepal reflect this global reality. Participants stated that the Constitution should “*guarantee the control of violence against women*” and also “*ensure ... women’s and children’s rights.*”¹⁸⁰ The need for greater enforcement of existing laws, particularly laws on gender violence, was also highlighted. In one interview, a participant noted:

*“[t]he law should be enforced seriously on the cases of gender violence. Women should be provided with training and legal awareness programmes. The victim should be given relief from the perpetrator legally. I think the victim should be provided with necessary security.”*¹⁸¹

justice; (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below” and further, “ 3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation.”

¹⁷⁷ ICCPR, art. 2(3); UN Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para.15.

¹⁷⁸ UN Basic Principles, principle 12.

¹⁷⁹ UNIFEM, “Women, War and Peace” (2001), p 17.

¹⁸⁰ Focus Group Discussion (Male), Makawanpur.

¹⁸¹ Key Informant Interview (Male), Morang.

Lack of information about how to access justice

International law recognises that accessing justice may be challenging and places an obligation on states, such as Nepal, to help make justice more accessible through information dissemination. Public or private channels can be used and it needs to include information about “all available remedies for gross violations of international human rights law and serious violations of international humanitarian law.”¹⁸²

Many respondents felt that regardless of how strong laws are, they will be of little or no use if women are unaware of them, do not see the relevance of these laws to their lives, or do not know that they have the right to use the laws when their rights have been violated. One respondent said:

“Women should be granted more rights. Laws should also be improved and social awareness programmes should be increased. Women should know what is in the law. They can ask for their rights only when they know about their rights. Even men should be made aware about women’s rights.”

Similarly, elsewhere, those interviewed stated that *“Many women are unaware about where they can get justice”*¹⁸³ and that they *“should be made aware about their rights so that they will fight for their rights.”*¹⁸⁴

While basic awareness of rights is a challenge, lack of information was also repeatedly emphasised as an obstacle. That is, lack of information about all aspects of seeking justice –where to seek justice, the procedures that need to be followed and the information that must be furnished. For example, one woman explained that she and her husband were victimised by both the state and the Maoists and how they endured arrest, beatings and torture. However, trying to access justice – for example, seeking compensation or filing a complaint with police – proved to be difficult because they had not obtained or preserved certain types of required evidence, such as medical certificates or photographs of wounds. For her, the

¹⁸² UN Basic Principles, principle 12(a).

¹⁸³ Key Informant Interview (Female), Achham.

¹⁸⁴ Key Informant Interview (Female), Okhaldhunga.

dilemma is, “*we didn’t know anything about asking for justice and spending money for it. But we need justice.*”¹⁸⁵

Lack of information about or lack of availability of legal aid is a major obstacle preventing people from seeking justice, especially in remote areas. Participants in one focus group suggested the need for “*adequate provisions to provide legal aid and suggest possible avenues to receive justice.*”¹⁸⁶ Elsewhere, a respondent expressed the view that “*legal aid services should be available not only at the district level but should be made locally available.*”¹⁸⁷ This means at the village and district levels there should be accessible and user-friendly, paralegal services and assistance that can link people to the institutions providing justice.

In some cases, interviewees were quite specific about the means by which justice should be sought, including the development of a separate mechanism. While the respondents did not necessarily know about all the issues around a truth or disappearances commission, they were clear about what such a mechanism should do. For example, one respondent stated that “*[a] legal body or commission should be formed to go through the cases related to conflict and the incidents of human rights violations should be investigated.*”¹⁸⁸

Another key obstacle identified was that in the criminal justice system, nothing seems to move forward. This, combined with a deficiency of available civil remedies, makes justice inaccessible and unobtainable for many.

Stigma

An additional obstacle to seeking justice that was mentioned was the stigma associated with reporting crimes of sexual violence. One interviewee noted that: “*The reality can’t be extracted from women victimised by conflict. Our social structure and customs forbid women to reveal their shame.*”¹⁸⁹

¹⁸⁵ In-depth Interview (Female), Dadeldhura.

¹⁸⁶ Focus Group Discussion (Female), Dadeldhura.

¹⁸⁷ Key Informant Interview (Male), Kapilvastu.

¹⁸⁸ Key Informant Interview (Male), Dadeldhura.

¹⁸⁹ Key Informant Interview (Male), Okhaldhunga.

Similarly, participants in a focus group discussion stated that: *“rape victims even don’t speak out about their case because of the pressure from her husband and the social stigma.”*¹⁹⁰

More specifically, another participant delineated some of the practical implications of this stigma: as a result of not being able to *“reveal the incidents ... because of social reputation and pressure”* women do not approach the court or the police. A woman who has been raped *“has to face embarrassment because of the questions asked to her”*. This leaves women with a serious dilemma – answering questions will be embarrassing and shameful and yet, *“if they didn’t answer the questions asked in the court, their case would weaken. How could they answer revealing their shame in front of a mass?”* This interviewee concluded that *“due to social and economical reasons women can’t approach for justice. There aren’t proper laws to address their problems and the extant laws are also in need of radical changes.”*¹⁹¹ The experience described in this interview demonstrates the very serious consequences of the stigma and shame associated with talking about sexual violence – that, in effect, this stigma prevents women from accessing justice.

This obstacle, as expressed in both interviews and focus group discussions, touches on broad and deeply ingrained societal perceptions, and thus, reducing or eliminating these barriers will require considerable efforts by the state to ensure it meets its obligation to change attitudes which enforce discrimination.

Lack of cooperation from relevant authorities

States are required to “[p]rovide proper assistance to victims seeking access to justice”, which remains a remote ideal for many women in Nepal.¹⁹² Even for those women who know where to go to seek justice, who are prepared to overcome the social stigma associated with gender-based violence, access remains a serious problem. The obstacles range from medical doctors who refuse to give a medical examination in the absence of a police report; the police refusing to file a “First Information Report” (FIR) in the absence of a medical report; to threats against the victim and her family to withdraw the accusations. Although in a few cases

¹⁹⁰ Focus Group Discussion (Female), Saptari.

¹⁹¹ Key Informant Interview (Male), Siraha.

¹⁹² UN Basic Principles, principle 12 (c).

individuals accused of rape have been detained, interviews and ongoing consultations have indicated that there is an increasing trend of settling the cases outside of formal justice mechanisms, for example, through community mediation where the victim receives meagre monetary compensation and the perpetrator is not otherwise punished.¹⁹³

During the conflict itself, specific obstacles faced by women included lack of cooperation from relevant authorities, starting with the refusal of the RNA to provide information to the women about the fate or whereabouts of their relatives detained by the security forces. In one interview, a woman whose husband was arrested by the RNA explained how she was treated with hostility when she went to the police and army to search for her husband. She recalled that *“they assaulted me with vulgar words as I searched for my husband at their place.”* She received no assistance from any relevant authorities in her search. She said:

“I myself searched a lot. I had no money, no food and no fare for the journey by truck. Yet I requested people weeping to help me and went everywhere. I searched for him with a hungry stomach for 10 days but no one told me the whereabouts of my husband.”¹⁹⁴

The repercussions of not receiving assistance or information during the conflict are far-reaching. Because evidence, particularly physical evidence, deteriorates over time, it is even more difficult to find relevant information post-conflict.

Even after the end of the conflict, the lack of cooperation from the authorities and the Maoists has remained a major obstacle to the realization of victims’ right to redress. In response to whether women went to seek assistance after the conflict, one individual in a focus group explained that:

“they have gone where they needed to go. At the moment, they also have support from the community. But the [army] barracks is not cooperating with them at all. They tell them that their disappeared family members have already died.”¹⁹⁵

¹⁹³ Advocacy Forum interviews and ongoing consultations (2009-2010).

¹⁹⁴ In-depth Interview (Female), Makawanpur.

¹⁹⁵ Focus Group Discussion (Male), Bardiya.

Elsewhere, an interviewee noted that “[b]oth the State and the Maoists were the hurdles for getting the justice.”¹⁹⁶

Lack of security

International law recognises that a person’s security may be jeopardised if they try to access justice.¹⁹⁷ To help address this, states are required to “ensure the safety of victims from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims.”¹⁹⁸ As a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Nepal is required to protect victims and witnesses “against all ill-treatment or intimidation as a consequence of his [sic] complaint or any evidence given.”¹⁹⁹ The Committee against Torture has also explicitly urged Nepal to create protection mechanisms.²⁰⁰

In this regard, many interviewees emphasised the importance of feeling protected if they were to come forward to complain or even discuss their experiences. Participants stressed how it was necessary to “*give them the feeling of security*” for them to feel that they can discuss their experiences with the understanding “*that nothing bad would befall them.*”²⁰¹

¹⁹⁶ Key Informant Interview (Male).

¹⁹⁷ The Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power states that, “[t]he responsiveness of judicial and administrative processes to the needs of victims should be facilitated by ... (d) taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf from intimidation and retaliation. The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment both require that complainants, witnesses, those conducting the investigation and their families must be protected from violence, threats of violence or any other form of intimidation. The Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity provide detailed guidance on victim and witness assistance and protection set out in international standards and law. Principle 10.

¹⁹⁸ UN Basic Principles, principle 12(b).

¹⁹⁹ CAT, art. 13.

²⁰⁰ Committee against Torture, Concluding Observations on Nepal, 2005, UN Doc. CAT/C/NPL/CO/2, para. 28, noting concern about “[a]lleged reprisals against and intimidation of persons reporting acts of torture, in the forms of re-arrests and threats, and the lack of witness protection legislation and mechanisms.”

²⁰¹ Key Informant Interview, (Male), Dadeldhura.

“Till now there is no guarantee of security, still there is fear among people. Due to this they still lack access to justice... Due to this fear the cases are not reported to police.”²⁰²

“We don’t have that kind of places where they can stay and get the security so that they can claim and report the perpetrators. We don’t have anything.”²⁰³

These statements are representative of the view that women will hesitate to seek justice when they feel their security is threatened. Without being able to trust institutions that are charged with providing justice, namely the police, public prosecutors and the judiciary, women do not feel that they will be safe when they report cases. Interviewees were well aware that there is no effective victim and witness protection system and fear that they may suffer repercussions if they attempt to seek justice for grave human rights abuses committed by the security forces or the Maoists.²⁰⁴

Impunity

The widespread climate of impunity in Nepal presents a major systemic challenge to any victim of gender-based violence seeking justice. When perpetrators of human rights abuses are not held responsible, women do not come forward seeking remedies as they have no confidence that they will ever get justice.

The right to an effective remedy, including reparations

The right to an effective remedy is well established in international law. Under the ICCPR, Nepal has an obligation to provide a remedy for violations of human rights.²⁰⁵ In the context of gross and systematic violations of human rights, the 2005 UN Basic Principles and Guidelines on the Right to Remedy and Reparation

²⁰² Key Informant Interview, (Male), Kapilvastu.

²⁰³ Key Informant Interview (Female), Kathmandu.

²⁰⁴ This is demonstrated by the few FIRs filed in relation to such grave abuses, especially by the UCPN-M. See Advocacy Forum and Human Rights Watch, *Waiting for Justice*, October 2008.

²⁰⁵ ICCPR, art. 2.3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles) provide that “the State is responsible for ensuring that victims of human rights violations enjoy an individual right to reparation.”²⁰⁶ As noted by the Special Rapporteur on violence against women, “[t]he quantitative and qualitative differences between individual and gross and systematic violations might affect the scope and nature of the remedies that can and should be afforded.”²⁰⁷

Throughout the research, respondents indicated that not enough has been done to provide effective remedies to the victims. This is perhaps exacerbated by the fact that the only type of “remedy” that has been provided has been monetary based “interim relief.” Such payments cannot be considered a remedy or form of reparation – according to international human rights law, reparations are rights-based, depend on the recognition of a violation, and should consist of multiple components: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²⁰⁸

Furthermore, in the case of the “interim relief” that has been provided to certain categories of “conflict victims” by the government, there has been concern about how the provision of relief at this stage (mostly in the form of one-off payments of Rs 100,000) will affect victims’ rights to comprehensive reparations. The gender dimensions of the Interim Relief Scheme are examined below.

The gender dimension of the right to a remedy, including reparations

Examining the impact of conflict on women and girls through the framework of relevant branches of international law, particularly international human rights law and international humanitarian law, shows that the consequences of conflict often amount to violations of international law, thereby triggering Nepal’s legal obligation to provide an effective remedy to victims.²⁰⁹

²⁰⁶ UN Doc. A/RES/60/147, 16 December 2005.

²⁰⁷ Report of the Special Rapporteur on violence against women, UN Doc. A/HRC/14/22, (2010), para. 18.

²⁰⁸ UN Basic Principles, UN Doc.A/RES/60/147, 16 December 2005, paras. 15-23.

²⁰⁹ Universal Declaration of Human Rights, art. 8; ICCPR, art.2 (3), art 9(5) and 14(6); ICERD, art 6; CRC, art. 39; CAT, art. 14 and Rome Statute of the ICC, art. 75.

CEDAW requires Nepal to prevent, investigate, punish and provide compensation for all acts of violence wherever they occur.²¹⁰ Furthermore, women who suffer violence should be informed about and provided with access to the mechanisms of justice and to just and effective remedies for the harm that they have suffered, as provided by national legislation.²¹¹ Nepal's obligation involves ensuring that women have access to both criminal and civil remedies and that effective protection, support and rehabilitation services are established for survivors of violence. Victims of rape, which constitutes both a gross violation of international human rights law (if committed by or with the involvement of state agents) and a serious violation of international humanitarian law (if committed in the course of an armed conflict), have the right to an effective remedy, including reparations. Similarly, according to the Convention against Torture, states have an obligation to ensure that a victim of torture "obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible."²¹² Nepal also has a positive obligation to provide effective remedies to victims of rape in other circumstances, including if committed by private individuals.²¹³ Nevertheless, the gendered impacts of conflict are not always recognised or addressed by mainstream, gender-blind redress processes. Moreover, such gender blindness persists in the administration of those processes, further aggravating any inequalities.

A large number of participants discussed the practical remedies that they seek from the government. Many of these remedies directly relate to the losses incurred as a result of the conflict. Additionally, in many cases, they are directly connected to greater empowerment and independence of women and increased gender equality. It is apparent from the answers of many participants that, in their minds, the post-conflict period provides an opportune time for the government to take

²¹⁰ CEDAW Committee, General Recommendation No. 19 (1992), para 9.

²¹¹ Declaration on the Elimination of Violence against Women, art. 4.

²¹² CAT, art. 14.

²¹³ *Supra* note 210; UN Basic Principles; and see Report of the Special Rapporteur on violence against women, UN Doc. A/HRC/14/22, (2010), para. 16.

steps that will not only remedy or rectify past wrongs, but will also lead to societal transformation, particularly with respect to gender equality.²¹⁴

The *Standards for Economic Assistance and Relief for Conflict Victims, 2008* were approved by the Council of Ministers on 25 April 2008. They were followed by specific directives to provide assistance to particular categories of conflict victims. None of the policy instruments providing interim relief to “conflict victims” mentions rape and sexual assault as a violation. If the Interim Relief Scheme is going to be any indication of the content of a future reparations programme, this is contrary to the conclusion reached by the Special Rapporteur on violence against women in her 2010 report to the Human Rights Council: “The current explicit inclusion of sexual violence in many reparations programmes is a victory against a tradition that minimizes its importance as collateral, private or non-political damage.” The Special Rapporteur goes on to caution that including only a “narrow range of forms of sexual violence” can be harmful in that it does not acknowledge the broad and diverse range of human rights abuses women and girls suffer.²¹⁵ For the Interim Relief Scheme to exclude all forms of sexual violence from the violations that qualify for relief is extremely discriminatory.

Many discriminatory practices can also be seen in the allocation of “interim relief” to widows of the disappeared. The “interim relief” system ensures that the wives of victims who died are entitled to a single women subsistence allowance and up to three of their children are provided educational scholarships till they are eighteen. However, while the children of those disappeared by the state during the time of conflict are entitled to educational scholarships till they are eighteen, the wives of these victims are not entitled to the single women subsistence allowance. The state has not only failed its responsibility to find out the reality behind the

²¹⁴ The Special Rapporteur on violence against women has noted that care needs to be taken that the right to reparation is not confused with social transformation, albeit both are critical for the rights of women. In 2008, the Committee on Economic, Social and Cultural Rights requested the government of Nepal “to strictly enforce the law prohibiting harmful practices that violate the rights of women and girls such as *deuki*, *badi*, *chaupadi*, marrying child brides and witchcraft.” The Committee also requested the government to immediately adopt specific legislation on domestic violence, making such acts a criminal offence, and “to undertake a major information campaign to raise awareness about such legislation.” The Committee urged the government “to take measures to develop procedures and educate law enforcement officials, judges, lawyers, social workers and medical professionals to enable them to protect effectively victims of domestic violence.” CESCR, Concluding Observations on Nepal’s Second Periodic Report, UN Doc. E/C.12/NPL/CO/2, 16 January 2008.

²¹⁵ Report of the Special Rapporteur on violence against women, UN Doc. A/HRC/14/22, (2010).

fate of the disappeared and make it known to the families, it has also sidelined them by not entitling them to relief.

The Interim Relief Scheme is also discriminatory against single women who choose to remarry and to leave their children with their (deceased) father's relatives. Remarriage makes them ineligible for interim relief. On the other hand, a husband can claim the interim relief even if he remarries. But if he has left the children, whoever is looking after the child can claim the relief. In some cases the parents of someone who died during the conflict have banned their daughters-in-law from claiming the interim relief because of fear she might remarry and take the money with her. This provision also maintains a silence about a woman who might remarry but choose to take custody of her children. If she remarries, she can apply for "interim relief" but only on behalf of her child/children, as long as she is looking after them.

Investigation

The right to an effective remedy cannot be guaranteed if there is no investigation. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that remedies can only be considered to be effective if they provide victims with judicial and other avenues to have their complaints investigated. In addition, there must not be any legal or practical obstacles that unjustifiably hinder investigations and the pursuit of reparation claims.

While individuals in several individual interviews and focus group discussions raised the importance of investigating human rights violations, mention was generally not made of gender-based violence. For example, in one focus group discussion with a group of men, the following statement was made: *"All the criminals that have killed people, disappeared and tortured them should be investigated and brought to justice."*²¹⁶ In his comment, this individual did not include gender-based violence as a violation that should be investigated. While this is not to say that he did not think gender-based violence should be investigated, his comment is perhaps indicative of the tendency for violations such as killings, torture and disappearances to be foremost in people's consciousness. Gender-based violence

²¹⁶ Focus Group Discussion (Male), Baglung.

is often not a violation that is immediately thought of when discussing serious human rights violations. As long as it is not considered on the same level of seriousness as these other crimes, it will continue to be excluded from the category of crimes for which people demand investigation.

Similarly, interviews revealed that when women talked about the crimes that should be investigated, there was a tendency to focus on violations suffered by members of their families. While it is not clear from the interviews whether the women themselves also suffered any violations, presumably they would have experienced the “secondary violations” associated with being the sisters, daughters or wives of those whose human rights were violated. However, rather than focusing on their own suffering, they discussed the importance of investigating the violations suffered by others.

“We haven’t got justice. The policeman who shot my brother down in the prison should be punished and we should be given appropriate compensation. Security forces have imprisoned and inflicted different tortures on my father without any reason. We need appropriate compensation for that too. Property worth lakhs has been destroyed. Government has evaluated the loss of property but we need the compensation for the loss of three years when the shop had to be closed. Only then we will feel justice. My brother was imprisoned for six years with many tortures. It should be investigated and compensation should be provided.”²¹⁷

This pattern of women not recognising or speaking of violations they suffered, but rather, highlighting the violations that their family members suffered, is one that unfortunately has been replicated in truth seeking contexts. It has been found that “many women do not speak freely of the human rights abuse they have suffered before institutions such as truth commissions. They may come forward in great numbers, but the majority of them discuss only violations committed against male relatives, as was the case in South Africa and Peru.”²¹⁸

²¹⁷ In-depth Interview (Female), Dadeldhura.

²¹⁸ International Center for Transitional Justice, Truth Commissions and Gender: Principles, Policies, and Procedures, (2006), p. 30.

Prosecution

Nepal, like all states, is obliged to prosecute and punish perpetrators of gross human rights violations and to combat impunity. This includes ensuring that amnesties are not granted to individuals who have committed violations of international humanitarian law and international human rights law that constitute serious crimes.²¹⁹

Most perpetrators of sexual violence have not been charged with a criminal offence even when a complaint has been registered with the police, let alone tried and prosecuted in a court. Testimonies from victims illustrate how this has further compounded their mental anguish. Most victims interviewed said that they longed to see perpetrators brought to justice and held accountable for their actions.

Impunity for human rights abuses by both the security forces and armed groups such as the CPN-M is systemic in Nepal. The well-known case of Maina Sunuwar best illustrates the lack of action by state institutions, including the police and Attorney General's Office. Maina Sunuwar was a 15-year-old girl who died in army custody in February 2004. Her killers have still not been questioned (let alone arrested) despite murder charges filed against them in the Kavre District Court as well as much advocacy and publicity around the case.²²⁰

Regarding the remedies sought by women, one key remedy mentioned repeatedly is the punishment of perpetrators of gender-based violence. The following statement expresses a sentiment expressed over and over again by those interviewed:

²¹⁹ Some treaties deal with the obligation to address human rights violations. See for example, CEDAW, art. 2(b) and CERD, art. 4(a). Others are more explicit about criminal punishment, for example, CAT, articles 4 and 5.

²²⁰ See Human Rights Watch and Advocacy Forum, "Waiting for Justice", September 2008; and "Still Waiting for Justice", October 2009; Advocacy Forum, "Maina Sunuwar, Separating Fact from Fiction", February 2010. The Committee on Torture has publicly noted its concerns about continued allegations of gender-based violence and abuse against women and children in custody, including acts of sexual violence by law enforcement personnel. In this regard, it recommended that Nepal should ensure that procedures are in place to monitor the behaviour of law enforcement officials, and should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. The Committee requested the government to provide it a list of cases of gender-based violence and abuse against women and children in custody that have been investigated and prosecuted, and the perpetrators punished. Committee against Torture, CAT/C/NPL/CO/2, 13 April 2007, para. 27.

“This is the appropriate time to demand justice for women victimised by violence and conflict.”²²¹

As stigma remains a major barrier, procedures that would, for example, allow for absolute confidentiality with regard to reporting and adjudicating cases are necessary.

Women’s subordinate position in society adds further grounds for the prevailing lack of accountability for gender-based violence. In addition, a number of legal and policy issues impede women’s attempts to seek justice. Chief among these is a limitation of 35 days for the filing of complaints of rape with the police.

Reparations

Compensation

The Basic Principles state that: “[c]ompensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of the case, resulting from gross violations of international human rights law and serious violations of international humanitarian law ...”²²² The Committee against Torture has addressed compensation to torture victims in Nepal. It noted that the Nepali judiciary has issued a number of decisions to award compensation in civil claims filed by victims under the Torture Compensation Act, but “regretted” that as of 2007 in only one case has compensation been paid.²²³ As of June 2009, AF and ICTJ are aware of 64 such

²²¹ Focus Group Discussion (Female), Dadeldhura.

²²² UN Basic Principles, principle 20. The examples of damage include a) physical and mental harm; b) lost opportunities, including employment, education and social benefits; c) material damages and loss of earnings, including loss of earning potential; d) moral damage; e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Compensation is referred to in a range of international treaties, such as the ICCPR, CAT, and the Rome Statute of the ICC.

²²³ Conclusions and recommendations of the Committee against Torture to Nepal, UN Doc. CAT/C/NPL/CO/2* (2007), para. 29. In 2008, the government of Nepal responded to the Committee’s finding, stating that “[c]ompensation has been provided to victims of torture as per the decision of the competent courts of law. During the last year, 5 victims of torture have been compensated and additional 3 are in the process of being compensated. During this year, Hariraj Chilwal and Thmsher Rai (father of deceased Ganesh Rai) were compensated with amount of Rs. 75,000.00 and Rs. 100,000.00 respectively. The compensation procedure has been streamlined and there is no delay in the process as such once final decision of compensation has been delivered by the competent courts. Ministry of Home Affairs hosts a separate unit for the management of assistance to the victims of conflict.” UN Doc. CAT/C/NPL/CO/2/Add.1, 2008, para. 26.

cases where compensation has been awarded, but in only eight of these the sum awarded in the judgement has actually been paid to the victims.²²⁴ These cases have not been separately analysed with regard to sexual violence.²²⁵

While the issue of compensation was a key theme emerging in the research, many of those interviewed expressed that only when perpetrators are punished will they feel a sense of justice. In particular, some mentioned that even if they have received monetary compensation, this is far from enough to enable them to feel that justice has been done. For example, *“I’ve got Rs. 100000 as interim relief but it doesn’t matter much. I’ll feel justice only when my husband’s killers are exacted severe punishments.”*²²⁶ One interviewee even described the government’s compensation packages as a way for the government to *“fool people.”* Her view was that victims will only feel a sense of justice when perpetrators are punished.²²⁷ Similarly, one participant stated *“it is not enough just to provide some compensation to a few single women to shut their mouths.”* That is, compensation must not be used as a way for the government to avoid its obligations with regard to uncovering truth and providing justice.

In addition, the sums provided as “interim relief” are far from sufficient. One participant, whose husband was killed, stated:

*“The government had recently given Rs. 100,000. What would that amount of money do? It won’t even help me to pay the debts. I’m facing my difficulties in providing expenses for my children’s education. How could I manage expenses? If I eat in the morning, I become worried about supper. Pathetic is the condition of my house.”*²²⁸

Rehabilitation and reintegration

A separate set of challenges has emerged in the transition period for those women who decided to take up arms during the conflict and whose future is now uncertain, given the prolonged deadlock in negotiations on reintegration and rehabilitation

²²⁴ “Criminalize Torture,” Advocacy Forum, 26 June 2009, p.39.

²²⁵ Key Informant Interview, Kathmandu.

²²⁶ In-depth interview (Female), Dadeldhura.

²²⁷ Key Informant Interview (Female), Dadeldhura.

²²⁸ In-depth Interview (Female), Dadeldhura.

of Maoist combatants. The reintegration and rehabilitation processes for these women must be constructed in such a way that their needs and experiences shape the process and content of reintegration and rehabilitation. In her thematic report to the Human Rights Council, the Special Rapporteur on Violence against Women stresses that reintegration and rehabilitation “may also require adopting women-friendly forms of distribution of services and creating opportunities that were previously denied to victims, often on the grounds of sex, including through meaningful employment, education, skill training ...”²²⁹ Of particular relevance to the case of Maoist combatants is the statement of the Special Rapporteur on violence against women in her thematic report to the Human Rights Council that “because the experience of conflict or political repression leads many women to become publicly and politically active for the first time in their lives, encouraging this agency ... could also be a way of rehabilitating women in a way that does not return them exclusively to their home and family lives.”²³⁰ Involvement in the Maoist army might have marked the first time that many women became active outside the private sphere and so reintegration and rehabilitation must incorporate and build on their agency.

Regarding their reasons for joining the Maoist army, one woman explained that she joined “*with the aspiration of heralding women’s progress, women who have been victimised by the feudal state.*”²³¹ Several interviewees expressed a sense of pride and were positive about the contributions that women made during the time they were in the Maoist army, characterising their role as a contribution to Nepali history. They would like their contributions to be documented and recorded, particularly given that media coverage of their role or participation in the Maoist army has tended to focus on negative aspects of their participation. One woman expressed a wish “*that Nepali common women know about our contribution and sacrifice for the country and the people by joining the PLA.*”

At the same time, the women discussed the negative impacts of the conflict for them – these included the fact that women were killed and disappeared for having

²²⁹ Report of the Special Rapporteur on violence against women, UN Doc. A/HRC/14/22, (2010).

²³⁰ *Id.*

²³¹ Testimony in the “Rehabilitation and reintegration” section is based on focus group discussions and in-depth interviews with female former Maoist combatants in Nawalparasi and Rupandehi. Cantonments visited were Fourth Division cantonment in Nawalparasi and Brigade cantonment in Rupandehi.

joined the Maoist army; children became orphans; state agents perpetrated sexual violence against women; and their families were displaced. Also, some felt that while the Maoist party does possess elements of progressiveness and a revolutionary attitude, there is still a patriarchal framework within the Maoist army.

The women expressed apprehension about their futures, specifically regarding the issue of whether they will be reintegrated into the Nepal Army. For example, one woman expressed her fear that, according to her understanding, the government had stated that women who have given birth and are outside of the cantonments will not be integrated into the Nepal Army. Based on this perceived understanding of the government's position, she argued that these women, too, should be integrated into the Nepal Army.

Female Maoist combatants living outside the cantonments also expressed concern about economic conditions and their difficulties in providing for themselves and their children given their limited incomes, which, according to them, consist of the monthly allowance they receive from the Maoist army. They said that they could not afford nutritious food for their children and so both they and their children suffered from malnutrition. They said their situation was significantly worse than that of members of the Nepal Army, which, according to their understanding, provides special nutrition and special food expenses. According to another interviewee, female Maoist combatants with children do not receive an additional allowance and thus both they and their children face malnutrition.

Children of Maoist combatants have also suffered because women are unable to pay for them to go to school. Again, these women stated that their conditions compared unfavorably with those of women in the Nepal Army who receive maternity care. It was not possible to verify this independently.

To date, female Maoist combatants have not been included in the negotiations over the reintegration and rehabilitation of combatants. There is a serious risk that their needs will be overlooked during the discussions focused on numbers of combatants to be integrated into the security forces.

Satisfaction

The Basic Principles outline the elements of “satisfaction” reflecting international law and practice. Satisfaction is a non-financial expression of reparation, which can take a range of forms. Relevant to Nepal is the search for, and acknowledgement of, the truth.

Seeking the truth

During the interviews and focus group discussions, women repeatedly called for the truth about the extent of human rights abuses during the conflict to be investigated and uncovered. One woman noted: *“the truth should be unveiled and my husband’s dead body should be provided to me.”*²³² Another individual discussed the formation of a truth and reconciliation commission and a commission for the disappeared, followed by legal punishment of perpetrators.²³³

Those interviewed said that it is the responsibility of the state to investigate the truth. Noting that *“we have heard nothing about people from the indigenous nationalities who were disappeared during the conflict,”* participants in one focus group discussion stated that *“something should be done to search for them.”* Specifically, *“their whereabouts must be made public.”* The women in this focus group explained that if those who were disappeared are alive, the state must show them to the public; if they have been killed, similarly, the state must show the dead bodies to the public.²³⁴

Despite these clear demands from women, the transitional justice process in Nepal is at serious risk of excluding women’s experiences. Except for a few *ad hoc* attempts, such as a “thematic consultation” with women by the Ministry of Peace and Reconstruction, there has not been a sustained and effective strategy in place to ensure women’s active participation in the consultation process on the Truth and Reconciliation Commission (TRC) Bill.

The government tabled a bill to establish the TRC and a bill to establish a Commission on Disappearance in Parliament in 2009. There are some positive

²³² Focus Group Discussion (Female), Bardiya.

²³³ In-depth Interview (Female), Baglung.

²³⁴ Focus Group Discussion (Female), Morang.

aspects of the TRC Bill. Among them are that women and girls who have suffered sexual violence are recognised as victims in the proposed Bill, the category of “serious violations of human rights” includes rape and sexual violence,²³⁵ and rape is included as one of the categories of crimes for which “no recommendation for amnesty shall be made to a person involved.”²³⁶ Nevertheless, the bill has considerable shortcomings from a gender perspective. For example, one serious issue concerns the powers given to the TRC to “cause reconciliation” for certain crimes, including sexual violence. If the methodology proposed would include the confrontation of the survivor of sexual violence with the alleged perpetrator and a process of mediation by the Commission, then this could be re-traumatising for women. There is also some ambiguity in the Bill regarding the possibility for the TRC to recommend amnesty for alleged perpetrators, which is extremely problematic for victims of sexual violence.²³⁷ According to the Bill, recommendation for amnesty involves submitting an application for amnesty and “repenting for the misdeeds carried out” in a way that is “to the satisfaction of the victim.”²³⁸ However, the victim does not necessarily have a voice in this process, as the Commission “may” consult the victim before making a decision, but such a consultation is not required.²³⁹ Thus, even though the Bill requires the victim’s satisfaction, it does not have in place measures to ensure that this satisfaction element is attained.

Furthermore, the bill does not consider how to make the appointments of commissioners, or the process of statement taking, hearings, and outreach processes more gender-sensitive. This could be because of an expectation that these issues will be raised at a later stage when the regulations for the TRC are created. Nonetheless, it is worrying that the only major point that was raised with regard to gender by Parliamentarians in their proposed amendments to the Bill as tabled in Parliament was to add the word “sexual” to the definition of victim, so that the definition of victim would read: “a person either killed or physically, mentally, sexually or economically caused injury or loss as a result of gross

²³⁵ Truth and Reconciliation Bill 2009, s.2(j).

²³⁶ Id. S. 25(2).

²³⁷ Id. S. 25(2)(d): Rape, but not sexual violence, is excluded from the category of crimes for which a recommendation for amnesty can be made.

²³⁸ Id. S. 25(3)

²³⁹ Id. S. 25(4).

violation of human rights..."²⁴⁰ An additional amendment was recommended under Article 4, to increase the number of women representatives from two to three when the Recommendation Committee makes recommendations for the appointment of the Chairperson and Members of the Commission.

As already indicated, the Disappearances Commission Bill does not recognise the gendered dimension of enforced disappearances. Though women mainly bear the pain and anguish of predominantly men being disappeared, the Bill has ignored women's experiences. There was no consultation with women's organisations in drafting the bill. The Bill does not recognise that the suffering that women go through amounts to torture as the UN Human Rights Committee has concluded in *Sharma v. Nepal*.²⁴¹

Education and employment

Many respondents emphasised the need for assistance in achieving the enjoyment of basic needs as a remedy. These remedies include skills development training and education and employment opportunities for women. Those interviewed explained that the state must provide women with these services partly because, as a result of the fact that their husbands were killed, disappeared, and subjected to other human rights violations, women are now the sole economic providers for their families.

*"There are women whose husbands have been disappeared or killed – the women from martyrs' families ... The main problem is that they have nowhere to go to earn; they also do not have an academic qualification. But they have children at home, so they must work for their sake. They must send them to school.... The State must look after such families... Victims should be included in various skills development trainings. They should get a good education. Illiterate women should be taught the skills they can learn so that they can become self-reliant. Educated women should be given an employment that suits their academic qualification."*²⁴²

²⁴⁰ Id. S.2(h).

²⁴¹ *Sharma v. Nepal*, Communication No. 1469/2006, CCPR/C/94/D/1469/2006 (6 November 2008).

²⁴² Focus Group Discussion (Female), Morang.

In addition to stressing the importance of education and employment for women, interviewees also expressed the need for free education to be provided to children. For example, the following statement was made in a focus group discussion: *“If my son would get free education then my family’s condition would be improved.”*²⁴³

Access to health care

Absence of even the most basic psychosocial support in many contexts precludes full recovery, prolonging victims’ and survivors’ suffering. In 2008, the Committee on Economic, Social and Cultural Rights noted that a significant proportion of Nepal’s population continues to have limited or no access to health services. This disproportionately impacts women, resulting in “alarmingly high rates” of maternal mortality. The Committee also highlighted that there was a lack of information on the extent of mental health problems in relation to those affected by the conflict and urged the government to accord high priority to mental health services in this regard.²⁴⁴

As indicated in the section on health, human rights violations committed during the conflict have severely affected the mental and physical health of victims. The Basic Principles address health under the framework of compensation and rehabilitation.²⁴⁵ It is well understood that this means that measures should aim at targeting the specific needs of victims and should not be seen as substituting the existing obligation of Nepal to ensure its population enjoys the right to health, which includes the provision of equal access to affordable quality health care. In the specific context of Nepal, it has been found that anguish and stress caused to family members as a result of disappearance is a violation of article 7 on the right to be free from torture, inhuman and degrading treatment and punishment.²⁴⁶ The remedy recommended by the Human Rights Committee was adequate compensation

²⁴³ Focus Group Discussion (Female), Bardiya.

²⁴⁴ CESCR, Concluding Observations on Nepal’s Second Periodic Report, E/C.12/NPL/CO/2, 16 January 2008, paras. 25-26 and 45-46.

²⁴⁵ UN Basic Principles, principle 20 (stating that compensation should be provided for “any economically assessable damage . . . resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as (a) Physical and mental harm” and principle 21 on rehabilitation which “should include medical and psychological care as well as legal and social services.” Many argue that restitution or satisfaction and guarantees of non repetition may have important psychosocial implications at individual and collective levels. Pablo de Greiff, ed., *The Handbook of Reparations*, 591, 2006.

²⁴⁶ *Sharma v. Nepal*, UN Doc CCPR/C/94/D/1469/2006, para. 7.9 (finding that “with regard to author herself, the Committee noted the anguish and stress that the disappearance of the author’s husband since 12 January 2002 caused to the author.” The Committee accordingly found that article 7 of the Covenant had been violated with regard to the author herself).

for the author and her family for the violations they suffered.²⁴⁷ In addition, reparations can include access to free specific health care services that go beyond what is constitutionally guaranteed.

Special assistance to conflict victims

In addition to wanting justice and reform of the criminal justice system, respondents also expressed a strong sentiment that neither compensation nor the provision of basic goods and services alone was sufficient.²⁴⁸ Rather, the government is obligated to provide these goods and services under any circumstances, and a “special package” should be offered to those affected by the conflict. This must be in addition to, and not *in lieu* of other types of benefits, such as education, employment and skills training. The following statement illustrates this point:

*“The State, NGOs, INGOs and others must all do something [for the victims], but it is mainly in the State’s hands. It is not enough to give them only food, shelter, clothes, money, health services, education and employment. They should be respected and separate relief packages should be provided to them. Food, shelter and clothes are our basic needs. But conflict victims, such as those women without husbands and sons, single women or parents without any more children left, should be offered a special package, which should be new and different compared to facilities ordinary citizens have access to.”*²⁴⁹

Interestingly, the Committee on Economic, Social and Cultural Rights has also touched on the issue of “special temporary measures.” In 2008, the Committee urged the government “to provide adequate and immediate assistance, in particular through special temporary measures, to alleviate the adverse impact of the conflict on women, including poverty and loss of income, social stigma, and insecurity of tenure resulting from unclear property rights due to the unknown fate of the missing spouses.”²⁵⁰

²⁴⁷ Id. para. 9.

²⁴⁸ See e.g., Report of the Special Rapporteur on violence against women, UN Doc. A/HRC/14/22, (2010), para. 19: “It is important to draw a distinction between reparation measures and other rehabilitation measures. Sometimes, especially when the emphasis is placed on rehabilitation services as measures of redress, the line that divides reparation measures for gross violations from social assistance, humanitarian intervention measures and gender development-oriented policies gets blurred.”

²⁴⁹ Focus Group Discussion (Male), Morang.

²⁵⁰ CESCR, Concluding Observations on Nepal’s Second Periodic Report, UN Doc. E/C.12/NPL/CO/2, 16 January 2008, para. 36.

7

Conclusions and Recommendations

This study explores the manifold ways in which women participated in, suffered and survived the armed conflict. It also highlights how women continue to suffer the economic, psychological and social consequences of violations nearly five years after the end of hostilities. The study further explores a hidden aspect of the conflict – sexual violence.

The research findings indicate that in Nepal, conflict-affected women, particularly victims of sexual violence, are marginalised and isolated. They also show that women played a crucial role during the conflict by sustaining their families and communities. In the aftermath of the war women are on the front line, searching for their loved ones or demanding justice and reparations. Sadly, their efforts to seek truth and justice impose extra burdens on them. They face additional hardships as they spend scarce resources and time (which they otherwise would use in earning an income for the family) to find their loved ones or seek justice. Additionally, some women told interviewers that they face criticism and hostility from their families or communities for stepping out of their domestic roles in search of justice and assistance.

Women also said that they lack opportunities to express their memories of violence and articulate their demands. Female Maoist combatants interviewed said that they have been marginalised and excluded from the integration process and that in some ways their party has also been affected by the prevailing patriarchal mentality. Many Maoist combatants described pressing economic problems; they are living

with an uncertain future in the cantonments, hoping to be integrated in the Nepal Army.

Against this backdrop, immediate strategies are necessary to improve conditions for women affected by the conflict and to prepare the ground for justice and sustainable peace. Advocacy Forum-Nepal and the International Center for Transitional Justice-Nepal propose the following recommendations to the government of Nepal and other actors to help ensure enjoyment of the rights of women affected by conflict.

Government of Nepal

Accountability and reparation for gender-based violence:

- Ensure that survivors of sexual violence have access to justice: the lack of clarity on the status of the 35-day limitation period for filing complaints relating to rape must not be used to obstruct women's access to justice.
- Investigate and prosecute crimes committed against women, including crimes of sexual violence.
- Put in place a strong legal framework, including draft legislation for a victim and witness protection system and allocate resources for the long-term protection of witnesses who testify in prosecutions of sexual violence.
- Prepare draft legislation to criminalise torture, including rape and gender-based torture and to criminalise disappearances.
- Review the laws, regulations and practices of the legal aid system and make sure that legal aid is available and accessible in all parts of the country, including to survivors of sexual violence and other victims of human rights abuses during the conflict. Communication and transportation costs should be included under existing legal aid schemes to cover the actual expenses of pursuing justice.
- Ensure that victims of sexual crimes receive appropriate reparations and that women participate in the entire reparations process from the shaping of policies to implementation, monitoring and evaluation.
- In addition to individual reparation programmes, adopt collective assistance and reparations programmes for communities affected by the conflict.

- Review the current “interim relief” scheme to eliminate any discriminatory aspects, including against victims of sexual violence and single women.
- Undertake a comprehensive evaluation of the condition of children born of rape and sexual exploitation and their mothers and provide them with immediate and appropriate support.
- Issue formal orders from the Ministry of Home Affairs to local administrative bodies to register the births of children born out of rape and give them citizenship on the basis of their mother’s nationality.

Right to health

- Train community health workers so that they are able to provide a wider range of health services, including support to women victims of rape and other sexual violence.
- Provide the following services and facilities free of cost and make them accessible at the community level: uterine prolapsed treatment, sexually transmissible infections testing and treatment; mental health care (counseling and psychosocial support) and psychological support to family members during exhumation and reburial processes.

Gender equality

- Ensure that the commitments to gender equality contained in the CPA and other peace process agreements are fully implemented, including at the local level.
- Put in place mechanisms to ensure that women’s voices are heard and that women can participate in ongoing negotiations and policy debates.
- Review existing plans and programmes to ensure that they address gender discrimination.
- Prepare draft laws to amend all remaining discriminatory legislation as directed by the Supreme Court.

Communist Party of Nepal-Maoist

- Cooperate fully with police investigations into gender-based violence by UCPN-M cadres.

- Ensure that women combatants are fully consulted about their future role, and that any integration and rehabilitation programmes agreed with the government fully recognise women's specific needs.

Constituent Assembly

- Amend the chapter on rape in the *Muluki Ain* to remove the 35-day time limit on filing formal complaints of rape and review the provision relating to consent.
- Pass legislation to criminalise torture, including rape and gender-based torture. Introduce a private bill if the government does not prioritise this in its legislative agenda.
- Pass legislation to criminalise disappearances.
- Put in place a strong legal framework to establish a victim and witness protection system
- Amend all remaining legislation that discriminates against women as directed by the Supreme Court.
- Prioritise the consideration of the two bills to establish a TRC and Disappearances Commission and ensure both are inclusive and effective and provide a public forum for all victims, including women, to express their grievances, articulate their suffering and in so doing, legitimise their experiences and enable society to understand what happened and work towards reconciliation.
- Ensure that the Evidence Act does not disadvantage prosecutions in rape cases, for example by requiring independent corroboration of rape survivors' statements before allowing rape survivors' testimony as evidence.
- Scrutinise annual reports of the NHRC, Women's Commission and other constitutional and statutory bodies and hold the government answerable for the implementation of their recommendations.

Judiciary

- Allocate resources for training of judges through the National Judicial Academy on adjudicating conflict-related cases, in particular cases of sexual violence.

- Provide judges with information and international jurisprudence on gender-based violence, including the state's responsibilities and the role of judges.

Police and Attorney General's Office

- Strengthen the police response to complaints about gender-based violence.
- Establish a focal point in police stations for victims to file complaints about gender-based violence and widely disseminate information about the availability of gender-sensitive services, including the free telephone hotline that is currently under utilised.
- In consultation with civil society, set up a special unit with the necessary expertise to investigate cases of gender-based violence.
- Review existing training curricula for police and public prosecutors and ensure that issues related to gender-based violence are included in a systematic way into the curricula and trainers are trained on these issues.
- Allocate resources for training police and public prosecutors on taking up conflict-related cases in general, and cases of sexual violence in particular.
- Sensitise prosecutors on sexual violence issues and take proactive measures to ensure the successful prosecution of crimes of sexual violence.
- Improve the response of law enforcement personnel to sexual and gender-based violence, including by recruiting more female police officers to act as focal points in police stations, and by training them on responding to sexual violence.
- Establish an independent oversight committee to monitor and evaluate the response of the police and Attorney General's Department to all crimes, in particular sexual violence cases. Include women from local civil society on the oversight committee.

National Human Rights Commission, National Women's Commission, National Dalit Commission

- Mainstream gender in the programmes of these national institutions, sensitise the staff on gender issues and train them in gender-sensitive investigations.

- Provide recommendations to the government on specific measures to address gender-based violence and ensure implementation.
- Prepare and make available to interested parties a list of perpetrators of human rights violations, including sexual violence, against whom the National Human Rights Commission has found *prima facie* evidence and has recommended further investigations.

National Planning Commission

- Put in place more effective monitoring and reporting mechanisms, to ensure that information on whether the targets set in national plans are met is made available.
- Report to Parliament on the final results of the implementation of each plan to ensure more transparency and create space for public debate.
- Ensure the early implementation of the National Plan of Action on UN Security Council resolutions 1325 and 1820.

Civil society

- NGOs and community organisations which work with women should prioritise assessing their needs and assisting them in ways that respect their dignity and human rights.
- In the short-term, in the absence of government-funded legal aid, civil society organisations should provide paralegal training to individuals in villages so that at least one person in each village can give basic legal assistance to women in simple language.
- Report the results of research and surveys that use information from victims back to them and discuss the findings with them, including identifying possible future initiatives.
- Monitor the implementation of government plans and policies and provide technical assistance to the relevant authorities, if so required.

Media

- Broadcast awareness raising programmes for single women to educate them and society about their rights, including to non-discrimination.

- Broadcast information on the existing Interim Relief Scheme to help potential beneficiaries to access the benefits of the scheme.
- Broadcast information on the TRC, Disappearances Commission and reparations policies once they are in place and advocate for women's participation in these mechanisms.

***Future Transitional Justice Mechanisms
(including TRC and Disappearances Commission)***

- Provide a specific focus, including allocation of resources, on ensuring that gender-sensitive policies and procedures are included in all aspects of the mechanism's work, including staffing, procedures and substantive issues. Provide ongoing training to Commissioners and staff on gender issues.
- Find ways to encourage testimonies from women.
- Ensure that gender-based violence is given appropriate prominence in developing policies and choice of cases for investigation and prosecution.
- Specifically include the impact of the conflict on women as an area of work of a TRC and/or Disappearances Commission, and other transitional justice mechanisms. This should include public hearings and research into historical, social and cultural attitudes towards women which were relevant to the conflict and its impact.
- Particular importance must be paid to children born of rape and women who have given birth after rape.
- Demonstrate cultural sensitivity and protect victims of sexual violence and witnesses, by ensuring an appropriate platform for women and men to speak out about conflict time sexual violence.
- Undertake public information and outreach campaigns to raise awareness of gender-based crimes and the role of TJ mechanisms in relation to these crimes.

Donors

- Commit sustained support to implement the National Plan of Action to put into practice UN Security Council resolutions 1325 and 1820.

- Design assistance programmes that pay particular attention to marginalised women, including in remote areas, after careful consultations with them. This will help ensure that the programmes are effective and that the demands and needs of women are met.
- Provide support to organisations working in the field of women and conflict, including those providing good quality psychosocial and health care support for survivors of sexual violence, and those working on accountability and prevention of these crimes.
- Ensure a coordinated approach between government, relevant institutions, civil society and other donors working on gender issues.
- Support the establishment of a credible Truth and Reconciliation Commission and Disappearances Commission.

United Nations

- Maintain demands that the government address past human rights violations, including gender-based violence and offer creative advice on effective approaches to address impunity.
- Advocate for credible transitional justice mechanisms to be established promptly and that these mechanisms should not be provided powers to provide amnesty for grave human rights violations.
- Adopt minimum standards of vetting for any members of the Nepali security forces who are proposed to serve in UN peacekeeping missions. In cooperation with the Government of Nepal, ensure that anyone under criminal investigation for gender-based violence and other grave human rights violations is banned from rosters of potential UN peacekeeping forces. Refuse to accept peace-keepers from Nepal until such a vetting process is completed.
- Support gender-based components of institutionalised human rights training, including for the police, Attorney General's Department, judiciary and constitutional and statutory bodies.
- Ensure that women's experiences are adequately addressed in forthcoming reintegration and rehabilitation programmes.
- Provide resources to implement the National Plan of Action to put into practice UN Security Council resolutions 1325 and 1820.



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