

# **Discrimination and Irregularities**

## **The Painful Tale of Interim Relief in Nepal**



### **A Report**

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## 1. Introduction

Amid protracted delay in the establishment of transitional justice mechanisms, the Government of Nepal has put in place a number of policies to provide “interim relief” to “conflict victims”. Advocacy Forum has assisted victims in a number of districts to access ‘interim relief’ and has received information highlighting many problems faced by the victims in accessing this “interim relief”. The main ones are:

- Lacunae in the Standards: some categories of victims have been excluded from receiving interim relief.
- Discrimination in implementation: reports relating to single women and children not being provided what they are entitled to.
- Dissemination and distribution problems: lack of information among victims as to when and how to access the interim relief; budgetary shortages leading to inadequacy of the release of funds; bureaucratic apathy and delays.
- Irregularities and political bias: Overt politicization of the decision-making bodies and the processes to identify the victims.

As a first step towards implementing provisions for relief to displaced people and to other conflict victims as set out in the Comprehensive Peace Agreement (CPA) of November 2006,<sup>1</sup> the government of Nepal decided in June 2007 to constitute a Special Task Force to collect the data of the persons,<sup>2</sup> families and structures affected by conflict. On the basis of the findings of the Task Force, the Council of Ministers on April 25, 2008 adopted the *Standards for Economic Assistance and Relief for Conflict Victims, 2008* (hereinafter the Standards). Further policy documents then put in place an “interim relief” scheme for individual categories of victims.

Initially, there was confusion as to whether the government intended the money to be provided under the Standards to represent the full extent of the commitments in the CPA. After considerable agitation by victims and civil society the Ministry of Peace and Reconstruction clarified that the Scheme was for

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<sup>1</sup> Section 5.2.4 of the Comprehensive Peace Agreement, 2006 reads: “Both sides agree to constitute a Peace and Rehabilitation Commission and carry out works through it to normalize the adverse situation arising as a result of the armed conflict, maintain peace in the society and run relief and rehabilitation works for the people victimized and displaced as a result of conflict.” Though no Peace and Rehabilitation Commission has been established, instead the Ministry of Peace and Reconstruction seems to have been tasked with the implementation of this provision.

<sup>2</sup> See 4 (C) of the *Directives to Provide Economic Assistance to the Families of the Deceased, 2009.*

“interim relief” subject to wider reparations, including compensation, to be decided by the two transitional justice mechanisms - the Disappearances Commission and the Truth and Reconciliation Commission (TRC) - provided for in the CPA but still to be established.<sup>3</sup>

Traditionally, the provision of *ex gratia* payments to victims of human rights violations or their relatives has been the most common way in which governments of Nepal have approached the implementation of the state’s obligations to provide redress and reparations. In the continuing absence of the transitional justice mechanisms promised in the CPA and the Interim Constitution of January 2007, there are concerns that the right to truth, justice and reparations will once again be denied to victims. The government seems to be focusing on providing economic assistance and to ignore the need to provide wider reparation to the victims and their families, which is of pivotal importance if the country is to heal from the 10-year-long armed conflict that came to an end in 2006. The state’s acknowledgement of what had happened and assurances that the same would not be repeated in the future is the keystone for the reparation process to begin.

While economic assistance is of crucial importance to the victims, the symbolic aspect of the reparation process cannot be undermined. Such aspects may comprise of formal assurances that such incidents will not be repeated in the future by prosecuting the perpetrators, setting up memorials for the victims so as to provide them recognition, providing facilities to the families of the victims in recognition of their contribution and sacrifice paid by their loved ones. Nepal’s “interim relief” scheme does not address these issues, as its sole focus is on the distribution of economic assistance. And the distribution of economic assistance is neither uniform nor consistent as will be demonstrated below.

This report aims to summarize the problems faced by the victims of conflict in accessing the “interim relief” made available to them by the government. The report is based on discussions with victims in Kaski, Baglung, Myagdi, Parvat, Kapilbastu, Rupandehi, Surkhet, Kanchanpur, Banke, Bardiya, Morang and Jhapa, Siraha, Ramechhap and Dolakha districts. It also draws on information provided by district representatives of Advocacy Forum, who have been assisting the victims to access “interim relief” in every possible way, be it to ensure that their name is included in relevant lists, or by informing victims of the release of the funds and assisting them with filing applications. The report will look into the provisions in the different directives, guidelines and standards that the government has devised in relation to the distribution of such relief and juxtapose them with the problems faced by the victims.

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<sup>3</sup> Bills for the established of the two commissions have been before the Legislative Committee of Parliament since April 2010.

The report shall enlist the problems backed up by victims' comments and some case studies from different districts. The objective of the report is to highlight the problems faced by the victims in accessing "interim relief" at the district level and point to the need to bring about changes.

## 2. Background

The provision of "interim relief" (and the problems with distribution of it) as described in this report has to be distinguished from other instruments to provide compensation in the form of constitutional and statutory provisions and institutional mechanisms like the National Human Rights Commission (NHRC).

Article 25.2 of the Interim Constitution of Nepal, 2007 guarantees those held preventive detention "contrary to law or in bad faith" the right to compensation. Similarly, Article 26.2 guarantees compensation for victims of torture and other cruel, inhuman or degrading treatment. Compensation may also be provided for any damage done to a person from the act of any official carried out in contravention of law or in bad faith during a state of emergency, as prescribed in Article 143.9. The Constitution (Article 107(2)) further grants powers to the Supreme Court to issue "necessary and appropriate orders" "for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective".

The Torture Compensation Act, 1996 entitles victims of torture to compensation of a maximum of NRs. 100,000 from the government. Complaints have to be filed within 35 days of the torture or of the release from custody. A report prepared by CVICT on the status of torture compensation after the adoption of TCA shows that amongst 25,000 cases of torture documented only 175 victims filed cases under the TCA. Among 85 cases decided, the courts ordered compensation in 27 cases.<sup>4</sup> Of these victims only two have received compensation. Others have yet to receive the money, although the TCA provides that compensation should be handed over within 35 days of the court order being issued.<sup>5</sup>

Some other laws, such as the Public Security Act (PSA), contain provisions for compensation to be granted through civil claims lodged at the district court level. Article 12 of the PSA provides for

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<sup>4</sup> Centre for the Treatment of Torture Victims, *Yatana Piditka Pakshyama Bhayeka Faisala Haruko Sangalo*, 2005, pg. 10

<sup>5</sup> TCA (1996), Section 9(1)

“reasonable” compensation to be awarded to anyone who was detained *male fide*. Once again, complaints have to be filed within 35 days of release.

The Terrorist and Disruptive Activities Act (TADA) provided for compensation to people held in preventive detention “with *mala fide* intention” and for members of the security forces and “innocent common people” killed or injured during the conflict and for those whose property was confiscated or damaged.<sup>6</sup> The Act does not impose any time limits on applications. However, the Act itself is no longer in force.

Under the Civil Rights Act 1955, the Appellate Court may order a person found guilty of violations of the rights under said Act to pay compensation to the victim. The court can determine the amount with “due consideration to the circumstances” (Section 17.3). The Act also enables those whose property is taken or damaged by the state to claim compensation or recovery (Section 18).<sup>7</sup> Claims under this Act have to be filed within eight months of the alleged violations.

Because of the time limits on filing complaints contained in the TCA, PSA, TADA and Civil Rights Act the statutory provisions for compensation to those who have been tortured or arbitrarily detained during the conflict are no longer a remedy that victims can access.

The powers of the NHRC were initially defined in the National Human Rights Commission Act, 1997. The Commission was made a constitutional body in 2007, and efforts are underway to draft a new act to strengthen its powers accordingly. Under the 1997 Act, the NHRC can recommend to the government to provide compensation to victims of human rights violations and abuses.

According to the NHRC annual report covering the period from July 16, 2008 to July 14, 2009, the NHRC received 677 complaints of human rights violations.<sup>8</sup> This included 70 cases of torture by security forces. Out of these 70 cases, the NHRC investigated only three. In two of the three cases, it recommended action against the perpetrators, and in all three cases it recommended compensation. The annual report does not provide any information on the remaining 67 cases or on the reasons why one case it investigated was dismissed. The NHRC conducted investigations into half of the assault cases (i.e. cases of crimes amounting to torture by non-state actors), and recommended action in two cases and

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<sup>6</sup> The provisions of the TADA were first promulgated by Ordinance in November 2001, at the time a state of emergency was declared and the army deployed. They were adopted into law by the Parliament in 2002. After it lapsed and in the absence of Parliament, it was re-promulgated repeatedly by royal decree from October 2004. It was not renewed after it lapsed in September 2006 and is no longer in force.

<sup>7</sup> <http://www.lawcommission.gov.np/index.php/en/acts-english>

<sup>8</sup> The NHRC works to the Nepalese fiscal year.

compensation in two cases.<sup>9</sup> These statistics prove the lack of capacity of the NHRC to investigate complaints of serious human rights violations, such as torture. Moreover, a joint study<sup>10</sup> carried out by NHRC and CVICT which examined the cases of 594 torture victims in five districts showed a very high prevalence of torture as a consequence of which there is also a very high prevalence of physical and mental health problems and associated disabilities. However, the NHRC didn't take the initiative to process these cases for compensation but only called on human rights organizations to put in place immediate rehabilitation services for torture victims.

In addition, there is a major concern that the NHRC's recommendations to the government in the cases that it investigated are not acted on. According to its Annual Report, the NHRC received 1173 complaints of human rights violations, including 104 of torture by security forces from 17 July 2007 to 14 July 2008. It conducted a total of 175 investigations, and made recommendations in 62 cases. None of its recommendations were implemented. Of the 677 cases received in 2008-2009, 521 were investigated, 4 were put on hold and 21 dismissed. Compensation was recommended in 63 cases, and the punishment of perpetrators in 41. The NHRC has repeatedly expressed frustration at the government's lack of implementation of its recommendations. In August 2010, it stated that among 386 recommendations made, the government had implemented only 34.<sup>11</sup>

No effective mechanism has been put in place to ensure that the NHRC recommendations are implemented. According to the NHRC's own figures, overall 86 per cent of its recommendations have not been implemented. The figure differs depending on the violation. In relation to disappearances, for instance, only 2 per cent of the 47 recommendations have been implemented.<sup>12</sup>

The Supreme Court of Nepal has also on occasion recommended compensation for victims of human rights violations. It did so most prominently in June 2007, in its landmark judgment in relation to 83 cases of enforced disappearances. Among others, the court ordered the government "to provide immediate relief of interim nature to the victims considering the physical and mental torture as well as economic loss that the families of the victim have had to undergo during their search and taking recourse to the process for obtaining justice."

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<sup>9</sup> NHRC Annual Report July 2008 to July 2009, only available in Nepali

<sup>10</sup> NHRC, *Study on Insurgency Related Torture and Disability*, 2003

<sup>11</sup> Nepalnews, *Government not implementing recommendations properly, complains NHRC*, 20 August 2010, <http://www.nepalnews.com/main/index.php/news-archive/1-top-story/8525-govt-not-implementing-recommendations-properly-complains-nhrc.html>

<sup>12</sup> The Himalayan Times, *86 percent of NHRC recommendations have been ignored*, July 6, 2010

In addition to the compensation awarded by the courts and that recommended by the NHRC, the Ministry of Home Affairs has regularly provided *ex gratia* payments to people on the basis that they had been badly affected by the conflict. Chiefly among them are families of the Nepal Army, Armed Police Force and Nepal Police personnel who lost their lives during the conflict. The Home Ministry has a tariff but there has been little transparency about the money allocated by the ministry. Hence, while a large number of people have not received any relief so far, others have accepted it twice or more under different categories.

Finally, on rare occasions, the Parliament has awarded compensation to be paid after it has investigated certain incidents. For instance, in January 2008, a Parliamentary Probe Committee reported and recommended action against 28 people including the Chief District Officer, superintendent of police, and the head of the army division deployed at the time, and for record amounts of compensation—up to NRs1Million (US\$15,500)—to be given to the relatives of Sapana Gurung, a woman raped and killed by army personnel in April 2006, as well as to the relatives of six people killed during demonstrations against her killing. However, the government so far only paid NRs375,000.

In conclusion, there is no overall policy in place for the granting of compensation, and the various existing schemes are open to political and other manipulations.

### **3. Government's initiatives to provide economic assistance to “conflict victims”**

As noted above, the Ministry of Home Affairs provided *ex gratia* payments especially to Maoist victims from as early as 1996, the year when the then Communist Party of Nepal (Maoist) (CPN-M) declared “people’s war”. One time cash payments were given to the dependents of those killed in the conflict and to those injured for medical treatment. With the intensification of conflict and the simultaneous increase in the number of victims and conflict-related displacements, the government initiated a relief program for the Maoist victims called *Ganesh Man Singh Shanti Aviyan* (Ganesh Man Singh Peace Campaign) on September 23, 1999. The program had a more systematic approach and tried to cover a wider range of victims and their needs. In conjunction with the campaign, the government established “Victims of Conflict Fund” in 2002. Besides the Home Ministry, the government also engaged the

Ministry of Labour and Transport, the Ministry of Women, Children and Social Welfare and the Employment Promotion Commission to distribute the relief and implement other related programs. The measures taken by the government to provide relief to “conflict victims” from 1999-2002 can be summed up diagrammatically as follows:

Categories of Victims <sup>13</sup>		Type of Relief	Amount (in NRs)
Dependant Families of the dead	Killed by the then CPN-Maoist	Cash	150,000
	Killed by the SF	Cash	100,000
	SF killed by the Maoists	Cash	750,000
	Children (of above three categories)	Scholarship	(Primary 10,000, Lower Secondary 12,000, High School 14,000, Intermediate 16, Graduate 18,000, Masters 20,000) per annum
	Widow/Widower	Maintenance Allowance	1K per month
Treatment of the Injured	Transportation Expenses for taking to well-facilitated hospitals	Transportation Cost	As incurred
	Treatment	Treatment Expenses	As incurred
	Expenses of caretaker during hospitalization	Care-taker expenses	75/day
	Transportation cost to return home	Transport Expenses	As incurred
	Mutilated	Cash	25,000/person
	Support materials for disabled/mutilated	Cash	As needed
	Psychological Treatment	All expense	As needed
Loss of Property	Private Houses used by SF	Cash	Equivalent to Loss
	Private Houses used by Government Offices	Cash	Equivalent to Loss
	Private Vehicles used by SF	Cash	Equivalent to Loss
	Inability to do farming due to Security Cordons	Cash	Equivalent to Loss
	Fixed/mobile property	Cash	As determined
	Loss of property by attack in SF working area	Cash	Up to 10,000

<sup>13</sup> Table copied from Special Task Force report, “Relief Program for Internally Displaced People Due to Conflict, FY 2004/2005”



All	One member of the family of the dead	Foreign Employment	235 quotas
	One member from the family of the displaced	Foreign Employment	445 quotas
	Orphans	Arrangement of Orphanage	Establishing 170 orphanages in 18 districts + 1,000/orphan
	Women Victims	Skill training for income-generation	As determined
	One member from disabled mutilated family	Foreign Employment	70 quotas
Security Forces	Disabled	Cash	10-15,000
	Mutilated	Cash	25-50,000

By October 2004, the government was said to have spent NRs 1,112 million for the compensation of the families of police personnel and civilians killed by the Maoists during the conflict.<sup>14</sup>

This is in stark conflict with the programs put in place for IDPs which were "mostly under-resourced and dried up completely in July 2002."<sup>15</sup> In relation to IDPs, the distribution was haphazard and there were neither systematic records of disbursements nor coordination on implementation. The approach was "discriminatory, lacking direction, insufficient, and sometimes non-existent"<sup>16</sup> Moreover, the distribution was *arbitral ex parte* in that only those who have affiliation with ruling political parties or members of the security apparatuses were able to receive the amount<sup>17</sup>. As noted in a five-point guideline issued to chief district officers in August 2002, the Government defined "IDP" to include only those displaced by Maoists (thus excluding those displaced by the Government's own security forces). In nutshell, the approach adopted by the government to address the needs of "conflict victims" was biased.

Similarly, the government allocated NRs 50 million (\$ 667000) for "IDP Rehabilitation Program" in 2003. However, it is not known whether the money was disbursed. Likewise, the government allocated NRs 50 million under the "Immediate Relief and Compensation Program" in 2004. Again, it appears the money was not disbursed. In August 2004, the government constituted a task force

<sup>14</sup> The Kathmandu Post, October 8, 2004

<sup>15</sup> Commission on Human Rights, Report of the Representative of the Secretary-General on the rights of internally displaced persons, Walter Kaelin, January 2006, E/CN.4/2006/71/Add.2

<sup>16</sup> South Asian Forum for Human Rights (SAFHR), Insurgency and displacement (<http://www.rfm.org./publications>)2004

<sup>17</sup> AF-ICTJ focus group discussion with Internally Displaced, 2007, Kathmandu

headed by Dr Shankar Sharma to formulate a package and action program to provide assistance and relief to IDPs. Based on the report of the task force, the government unveiled a 15-point relief package for not only IDPs, but “conflict victims” more widely on 7 October 2004, giving continuity to the Ganesh Man Singh Peace Campaign at the same time. Responsibilities were assigned to different ministries to for implementing the package program. The key features of the program included: education allowance of NRs. 1000 (US\$ 13.3) per month for children of deceased or displaced persons; NRs.300 (US\$ 4.0) per month for displaced persons aged above 60 years; Income-generating skill development programs for displaced women and men; a lump sum between NRs. 2000-4500 (US\$ 26.6- 64.28) per family; soft loans for small-scale business; vocational training, arrangement of basic public services, priority in labour intensive public construction works and waiving of land revenue for the registered conflict-affected people. However, the program was abandoned after the then King Gyanendra took power on February 1, 2005. Eventually in April 2006 after the restoration of democracy, the government introduced the "National Policy on Internally Displaced Person". Later, the *Procedural Directives of National Policies Relating to Internally Displaced Persons, 2007* were introduced. However as shown below, the relief provided to displaced people continues to be problematic.

In the landmark Baluwatar agreement of November 8, 2006, the then Seven-Party Alliance Government and the CPN-M made a formal commitment to provide relief to the victims of conflict.<sup>18</sup> The CPA provides for the formation of a National Peace and Rehabilitation Commission to carry out relief and rehabilitation of “conflict victims” and displaced people<sup>19</sup>, while ensuring the right of victims of conflict, including torture and disappearance to relief.<sup>20</sup> The Interim Constitution of January 2007 also makes the State responsible to arrange for appropriate relief, recognition and rehabilitation of families of those deceased, disabled or injured during the conflict<sup>21</sup> and to conduct special programs to rehabilitate the displaced and to provide compensation for damaged private and public properties.<sup>22</sup> Besides, there is explicit provision of state responsibility to provide relief to

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<sup>18</sup> 58 Section I clause (2), Section IV. On management of the victims of conflict:

'1. Provisions will be made for providing proper relief, honor and rehabilitation of the family members of the people who were killed during the conflict and for those who have been disabled by injury in this course.

'2. Provision for relief to the victimized family members of those who have been disappeared on the basis of the report presented by the investigation commission shall be made

<sup>19</sup> CPA, Article 5.2.4

<sup>20</sup> CPA, Article 7.1.3

<sup>21</sup> Interim Constitution, Article 33 (p)

<sup>22</sup> Interim Constitution, Article 33 (r)

the families of persons subjected to enforced disappearances on the basis of the report of the Investigation Commission constituted to investigate such cases during the conflict.<sup>23</sup>

At this backdrop, the government formed a Special Task force on 10 June 2007 to collect the data of the persons, families and structures affected by conflict. The *Standards for Economic Assistance and Relief for Conflict Victims, 2008* produced by the Special Task Force were approved by the Council of Ministers on 25 April 2008 (hereinafter the Standards). They were designed to provide guidelines to the distribution of relief for two years following its approval and set out general guidelines about who were considered "conflict victims". It was also agreed that following the two years, for those victims who were still going through the process, a new set of guidelines would be put in place.

The standards were followed by specific directives to provide assistance to particular categories of "conflict victims". The major directives and guidelines that this report shall be commenting on are the *Directives to Provide Economic Assistance to the Relatives of the Deceased, 2065* (approved by the Council of Ministers on 5 October 2008) and the *Directives to Provide Relief to the Families of the Disappeared People, 2065* (approved by the Council of Ministers on 12 January 2009).

The general procedure for accessing relief is as follows: The victim writes an application to the District Administration Office (DAO) for relief, stating his/her loss. They fill up a designated form, get a recommendation from their Village Development Committee (VDC), proof of the relationship between the victim and the complainant, (in the case of people who were killed, the death registration certificate), and two photographs. In the district there is the *Conflict Victims Statistics Collection and Inquiry Committee*. This committee comprises of the head of the District Security Bodies, representatives of political parties, and three members of the civil society. The information about the application procedure and the release of the funds is published in the local newspapers and broadcasted on local FM radio stations.

The Standards further provide that in order to confirm whether or not a person has died due to conflict, the CDO should, as per the necessity, instruct the police to draw up a field inquiry report (*Sarjamin*), hold a District Security Committee meeting and an all parties' meeting. On the basis of the information gathered thereof, s/he should send a recommendation to the Peace and Reconstruction Ministry.

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<sup>23</sup> Interim Constitution, Article 33 (q)

Until July 2009, total 16,729 persons who died due to the conflict had been identified.<sup>24</sup> The beneficiaries of 14,064 of these people had received the relief amount of NRS 100,000. It has also been reported that the Ministry has provided relief to 1179 immediate beneficiaries of the disappeared against the 1327 identified while 1567 disabled persons were provided compensation against 4,305 identified under the 2008 Standards by the Task Force .By July 2010, NRs1,406,400,000 (\$ 19.2 million) had been spent by the government to provide “interim relief” to the victims under various categories.

#### **4. Lacunae in the Standards and policies**

The policies providing “interim relief” to “conflict victims” limit the provision of relief to the families of the dead,<sup>25</sup> disappeared,<sup>26</sup> injured and disabled<sup>27</sup> and the ones whose property was lost during the conflict.<sup>28</sup> The two separate guidelines<sup>29</sup> that followed the standards for the provision of “interim relief” to the deceased and disappeared respectively detail the procedure for identifying and handing over relief to the families.

Despite numerous reports of rape and other forms of sexual violence against women, the widespread and systematic practice of torture and the large number of people suffering various forms of mental trauma as a result of the conflict, these three categories of victims were not included in the “interim relief” schemes.

##### *Torture victims*

At this point, torture victims have to rely on trying to obtain compensation through the courts under the TCA or through the NHRC. However, both are entirely inadequate. During the conflict, victims were too afraid to file complaints due to the prevailing climate of impunity, and threats from the security forces and the Maoists. The 35-day limitation period for the filing of cases under the TCA makes it impossible for people to access the courts once the conflict formally ended. As described above, the NHRC has not

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<sup>24</sup> Data provided by Ministry of Peace and Reconstruction

<sup>25</sup> Supra notes 2 at 1.

<sup>26</sup> Ibid at 5

<sup>27</sup> Ibid at 2

<sup>28</sup> Ibid at 3 and 4

<sup>29</sup> Directives to Provide Economic Assistance to the Relatives of the Deceased, 2065 (Approved by the Council of Ministers on 5 October 2008) and Directives to Provide Relief to the Families of the Disappeared People, 2065 (Approved by the Council of Ministers on 12 January 2009)

prioritized the investigations of complaints of torture, even if people had complained to it. Though the NHRC received more than 3,000 complaints of torture, it recommended compensation in a mere 3 cases.<sup>30</sup>

Torture victims are entitled to a maximum of NRs 100,000 compensation recommended by a court under the TCA. As described above, the courts have rarely awarded such compensation. Similarly, as information from the districts reveal, despite some recommendations from the courts and NHRC, torture victims are yet to receive relief recommended by them.

*Case: Sujjan Kirati, 22, resident of Letang VDC-6, Morang district was arrested near his home on November 5, 2006 while he was returning home from his father-in-law's house at about 8 pm. Around 6 police personnel, who were under the command of Police Inspector Hari Naryan Chaudhari, arrested him and took to Letang Security Base Camp, Morang district. He was beaten for around an hour with plastic pipe and kicked with boots and then detained in a cold dark room. A case under the TCA was registered on December 6, 2006. The District Court of Morang awarded NRs 30,000 compensation. The victim applied to the District Administration Office on April 9, 2008 but he has not received any compensation till date.*

Furthermore, acts amounting to torture inflicted by members of armed opposition groups, such as the CPN-M; do not fall under the category of torture under the Torture Compensation Act.<sup>31</sup> Thus, the victims of physical abuse by Maoists are not entitled to compensation under TCA even if a complaint is lodged in the courts.

In 2008-2009, the NHRC conducted investigations into 18 cases (including those from previous year) out of 114 complaints (including 3 cases of assaults by Maoists and 35 cases of assaults and ill-treatment by other groups), and recommended action in two cases and compensation in three cases. According to the NHRC none of its recommendations in these cases have been implemented.<sup>32</sup> The general overview of past two reporting years is even more telling. From 17 July 2007 to 14 July 2008, the NHRC received 1173 complaints of human rights violations, including 104 of torture by security forces, 64 criminal acts amounting to torture by the CPN-M and 13 cases of torture by "others". It conducted a total of 175

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<sup>30</sup> CVICT, "Collection of verdicts in favor of torture victims", 2005 (Report in Nepali)

<sup>31</sup> The definition of torture in the TCA is: "physical or mental torture inflicted on a person who is in detention for investigation or awaiting trial or for any other reason, and this term includes cruel, inhuman or degrading treatment that person is subjected to.

<sup>32</sup> NHRC Annual Report July 2008 to July 2009, only available in Nepali

investigations, and made recommendations in 62 cases. None of its recommendations were implemented.<sup>33</sup>

Amid the prevailing uncertainty about the establishment of the TRC, the inadequacies of the TCA and NHRC as mechanisms to obtain compensation for torture victims, and their absence from the “interim relief” policies, there are grave concerns that the government is failing in its duty to provide redress and reparation to all victims of torture.

### *Victims of gender-based violence*

None of the policy instruments providing “interim relief” to “conflict victims” mentions rape and sexual assault as a violation, the victims of which are entitled to redress and reparation under international standards. As reported by different human rights organizations and media, such violations were common during the conflict. However, this is completely overlooked by the “interim relief” scheme leading to the deprivation of this category of victims.

Rape victims face a further hurdle in seeking justice as the *Muluki Ain* (Country Code) provided for a 35-day limitation to file complaints with police. Many victims of rape were too afraid to try and file complaints during the conflict. Once the conflict finished, it was too late for them to file complaints. (The Supreme Court in June 2008 ordered the government to extend the 35-day limitation; though the *Muluki Ain* has not been amended to date.)

### *People with mental disabilities*

The people who were injured and disabled during the conflict are entitled to “interim relief” according to the standards. However, the standards maintain a silence about the victims of conflict who suffered mental trauma. In the absence of physical evidence of disability, measured in percentage, as required by the standards, the people who suffered mental illnesses, disabling them to work and lead an independent life have not been made eligible to claim “interim relief” from the government.<sup>34</sup>

Given the ten-year-long history of conflict and the widespread violence, numerous people suffer from mental health problems. Some of them are receiving treatment under the auspices of non-

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<sup>33</sup> NHRC Annual Report 2007/2008, A synopsis in English, <http://www.nhrcnepal.org//publication/doc/reports/Annual%20Report%20Synopsis%20in%20English.pdf>. The English summary does not provide further details regarding outcomes of investigations.

<sup>34</sup> Ibid at 2.A.1 (A), (B) and (C)

governmental organizations (NGOs) like Advocacy Forum. The question that can be raised here is, why are the NGOs bearing the burden for what is the responsibility of the state? Can the peace process be complete without addressing the needs of all categories of victims?

No peace process can be complete if discrimination of any kind persists. Nepal's "interim relief" mechanism is discriminatory and leaves out a number of categories of victims. These add to the troubles of the victims, who have already suffered a lot in the hands of the state as well as the CPN-M. No sustainable peace can be imaginable while discriminatory practices continue to exist.

## **5. Discrimination in implementation of the existing standards and policies**

The Standards require that the people who have received "interim relief" for the death of their family members from the District Administrative Office (DAO) are eligible for further relief including a one-off lump sum for subsistence for single women and an educational stipend for the children of the deceased.<sup>35</sup> The educational stipend is provided to a maximum of three children of the deceased until they are 18 years of age.<sup>36</sup>

While it is important that victims are entitled to different forms of "interim relief", the practical implication of this provision is that it has led to further delays for some victims in accessing "interim relief". It has also led to discrimination against certain categories. Those most badly affected are wives of disappeared persons; children; people with disabilities; relatives of those killed or disappeared by the state (who find it more difficult to access the "interim relief" than the relatives of those killed or disappeared by the CPN-M) and displaced people.

### ***Women, including wives of disappeared persons and widows who remarry***

Initially, the Standards to Provide Economic Assistance and Relief to the Victims of Conflict, 2008 provided for only Rs. 25,000 to be paid as "interim relief" to relatives of disappeared people on a par with the amount allocated for the people held incommunicado for over 30 days by the CPN-M or the

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<sup>35</sup> Ibid at 1.2

<sup>36</sup> Ibid at 1.2.1 and 1.2.2

state forces during the time of conflict.<sup>37</sup> In this initial period, relatives of the disappeared started registering the death of their (disappeared) loved ones in order to obtain the necessary documentation to qualify for the NRs.100,000 “interim relief” for relatives of those killed during the conflict. These people are now concerned that the disappearance of their relative may no longer be investigated by the disappearances commission.

Later, following agitation from the families, separate guidelines were introduced to provide “interim relief” to the victims of disappearance called *Directives to Provide Relief to the Families of the Disappeared, 2009*. The adoption of these directives signaled that the plight of the families of the disappeared was recognized, and they were accorded equal amount of “interim relief” as the families of the dead. However, it did not address all the issues relating to the families of the disappeared as in the case of single women and the children of the disappeared.

An example of the discriminatory practices can 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 the single women subsistence allowance and up to three of their children are provided educational stipend till they are eighteen. However, the families of the people disappeared by the state during the time of conflict are deprived of such allowance and scholarships. The state has not only failed its responsibility to find out the reality behind the fate of the disappeared and make it known to the families, it has also sidelined them by not entitling them to the full range of “interim relief”. The victims in Banke district state that when they raised their voices against such discrimination, the DAO responded that since the death of the person is not established, s/he may come back and therefore, the families are not eligible for “interim relief” like in the case of those whose death has been established.

The “interim relief” mechanism 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”.<sup>38</sup> On the other hand, in the case of a husband whose wife was killed or disappeared, he 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 “interim relief”. In some cases the parents of someone who died during the

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<sup>37</sup> Supra notes 2 at 5.1

<sup>38</sup> Ibid at 1.3.2



conflict have banned their daughter-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 women who might remarry but choose to take custody of their children. If they remarry, they can apply for “interim relief” but only on behalf of their child/children, given they are being looked after by them.

In Rupandehi district, there are cases where the widows of police and army men have claimed and obtained “interim relief” in addition to the payment they received at the time their husbands died. Women whose husbands have disappeared are not entitled to the “interim relief” given to single women though their plight is similar.

### *Children*

The Standards entitle the children of the victims of conflict an educational stipend to pursue their education. It provides for a recommendation committee, comprising of the Chief District Officer, District Education Officer and an Officer designated by the District Education Officer as a member Secretary,<sup>39</sup> to make recommendations for scholarship. On the basis of these recommendations, the Ministry of Education and Sports sends the funds to the District Education Office, which then distributes the amount among the eligible children of the victims in the district.

People have to file separate applications, attaching the receipt of the “interim relief” under the Standards. While making other forms of relief contingent upon the receipt of the relief for the deceased by the DAO ensures efficiency and a proper use of resources, the delay it causes has cost educational opportunities for some children. For example, in a case in Bardiya district, a child who was eligible for the educational stipend when his family first filed an application for relief turned eighteen when his family finally got the relief due to the delay in funds’ release.

The Standards specify scholarship amount of varying proportions to be given as lump sums to students once a year for the children of the deceased depending on the level of education of the child: for Primary students Rs. 10,000, for Lower Secondary students Rs. 12,000; for Secondary students Rs.

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<sup>39</sup> Supra Notes 2 at Section 1.2.4.

14,000 and for Higher Secondary level Rs. 16,000.<sup>40</sup> In many districts, the professed amount has not been provided to them reportedly because of the release of inadequate funds. In some districts, in the absence of sufficient funds to provide the full educational stipend, the District Education Officers (DEO) in consultation with the CDO have reduced the amount allocated to each child. For example in Dolakha the children were given Rs. 4000 for Primary students, Rs.5000 for Lower Secondary, Rs. 6000 for Secondary and Rs. 7000 for Higher Secondary level. In Rupandehi, the children were provided Rs. 2,520 each as educational stipend in the year 2065/66, and Rs. 4520 in the year 2066/67. According to the respective DEO, this was due to the fact that the budget allotted is inadequate to provide the aforementioned amounts to the 99 students who had made applications. Therefore the DEO divided and distributed the available amount equally among all the eligible children who were eligible for scholarships.

*Victims of the state (as opposed to victims of the CPN-M)*

Victims complain that access to “interim relief” has been much easier for the victims of the CPN-M than to the victims of the state. According to reports from Banke, Bardiya, and Kapilbastu, the state victims have had problems in claiming “interim relief” in the absence of a police report which is required as evidence to establish the death and disappearance of a person. They have also found it difficult to obtain a copy of the police field inquiry report (*sarjamin*). The police report that the victims file as well as the field enquiry report that the police carries out against that report is required as evidence. But according to the victims, lodging a report was not easy during the period of conflict when the police were mostly stationed in the district headquarters. There are also cases where the victim’s families chose not to make a police report because they were afraid of being targeted as supporters of the CPN-M.

*Case: The security forces killed the son of Purna Bahadur Chaudhary, while he was having dinner at home on 30 May 2002. He was not been able to get “interim relief” because he was unable to lodge a complaint with the police, and there was no police field inquiry report (sarjamin) immediately after the incident happened. Chaudhary says that he was unable to file a report because there was no police post in the village at the time his son was killed. He lacked the*

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<sup>40</sup> Ibid at 1.2.1

*evidence in the form of a police report and police field enquiry report even though he has a recommendation from the VDC stating what had happened. The DAO insisted on obtaining a copy of the field inquiry report. When the police did finally go to his home, years after the incident, Purna was absent and the police in the report stated that Chaudhary's son might have died because of natural causes. Chaudhary questions if this is fair because his son was killed by security forces when he was eating at home and all the villagers know about it. The VDC has confirmed this, and made recommendation accordingly. After a long time, he finally received the money. Soon after, the money which had been deposited in a bank account, was frozen as Purna Bahadur Chaudhary's daughter-in-law, who had remarried, had also claimed the "interim relief" on behalf of the children of the deceased.*

### ***Disabled people***

Human rights defenders from the districts complained about the haphazard calculation of the percentage of disability in the case of people disabled during the conflict. The Standards provide a compensation amount worth Rs. 200,000 for someone who was fully disabled due to the conflict. In case of other forms of disability, the amount for compensation is allotted depending upon the percentage of disability.<sup>41</sup> However the determination of percentage of disability is not based on any sound standards as a case from Surkhet exemplifies.

*Case: Kabiram Khadka and Nanda B.K, two victims from Surkhet district, were disabled during the conflict and are paralysed from the waist downwards. They were both diagnosed as 50% disabled and Nara Bahadur Bista from the same district who was shot on his hand but who otherwise is not affected was also considered as 50% disabled. (It is noteworthy that Nara Bahadur Bista is a UCPN-M member of parliament, suggesting possible political interference in the case.)*

### ***Displaced people***

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<sup>41</sup> See Section 2 (Ka) 1 (ka) (kha) of the Standards for the Provision of Economic Assistance and Relief to the Victims of Conflict, 2008.

The programs mentioned in the National Policy for the Displaced have not been thoroughly implemented. Until July 2010, only 2500 displaced families were provided relief against 52000 cases recorded by the MoPR. Even in the few cases/districts that have been implemented, there are inconsistencies and allegations of exclusion. A report prepared by Internal Displacement Monitoring Council (IDMC) showed that only in three districts out of the 16 surveyed were allocated sufficient funds to meet the needs of registered IDP's.<sup>42</sup> In Surkhet, some displaced people have been able to claim relief repeatedly, whereas some are yet to receive relief.

The national policy on displaced people only addresses the internally displaced people. Those victims who have moved to neighboring places in India during the conflict are excluded. In the Terai region, some of the people displaced during the conflict went to live in India. In a country with open borders, where the people across the borders are related to each other, it is not unreasonable that the displaced go to live with their close relatives. This may not necessarily mean that the displaced do not want to return. This is a common complaint heard in Rupandehi district.

Even though the National Policy for the Displaced mentions the provision of skill trainings to enable the displaced to generate income, reports from the districts state that so far in none of the districts mentioned in this report have there been such trainings offered.

## **6. Problems in Information Dissemination and Relief Distribution**

### *Lack of information*

The process of relief distribution is problematic in the absence of an efficient system of information dissemination. The impact of such inefficient information dissemination results in the victims not being informed about the process and the deadlines to claim relief. There have been reports from every district that some of the relief money sent from the central government to be released in the names of victims' families has had to be returned as some of the victims have failed to come forward to claim the money.

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<sup>42</sup> Internally Displaced Monitoring center (IDMC) records a total of 70,000 cases of displacement [http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/FFF5958EB13C0AF8C12576B900395E1D/\\$file/Nepal\\_Overview\\_Jan10.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/FFF5958EB13C0AF8C12576B900395E1D/$file/Nepal_Overview_Jan10.pdf)

For instance, in the fiscal year 2009/10 (2066/67), the funds released for eight “conflict victims” in Bardiya were returned in the absence of the claimant coming forward. In Rupandehi, the funds for 25 victims were returned. There were several possible reasons for this: those who qualified may have emigrated; some may not have been informed properly, others were not given the money because they lacked proper documentation.

When asked about the reason why they failed to come to claim the relief, the victims in Banke, Bardiya, Kapilvastu, Jhapa and Rupandehi cite lack of timely information. The single women of Surkhet were particularly vocal about the problem. They said they did not know the procedure (i.e. where exactly to go to claim) or had not gone to claim the money after it was released as they were not informed that the money sent for them had arrived.

Information regarding the process of applying for “interim relief” and the deadlines were broadcast by the local FM stations and published in the local media, though it is not clear how frequently or for how long. The notice about the same is also pasted in front of the VDC office. But apparently, these methods of information dissemination are not effective enough.

There is, therefore a need for some alternative form of communication that can be more effective for the victims living in the rural parts of the country who are beyond the ambit of the media and the published messages. Training and mobilization of VDC staff, community-based organizations, individual human rights defenders and victim leaders at VDC level to raise awareness and who can also help victims with the documentation procedure, may furnish better alternatives.

### *Inadequate/delayed release of funds*

Financial problems are a major hurdle faced by the “conflict victims” in accessing “interim relief”. In all the districts, the money is sent in batches which lead to the deprivation of certain victims for years whereas others access relief under different headings relatively fast.

In the districts sampled in this report, there are a number of enlisted victims, including dead and disappeared whose families are yet to receive the “interim relief”. In Surkhet, among the 288 deceased

victims whose names were submitted for "interim relief", only 253 have received Rs. 1 lakh released by the Ministry of Peace and Reconstruction. The "interim relief" for the remaining 35 had reportedly not been sent as the forms were not filled in properly. In Kanchanpur also, out of the total 158 people deceased and recommended for relief, only 137 have received it. In Baglung district, out of the 25 disappeared people, families of 22 have received the relief funds. In Kanchanpur, out of the 30 disappeared, 26 have received it. The reasons for this vary. According to Advocacy Forum in Kanchanpur, those who have so far not received the "interim relief" are people who applied late and whose applications were sent later to the MoPR. They applied late because they came to know about the relief late than those who have already got relief. In Baglung, those on the disappeared list provided by the ICRC have easily obtained "interim relief", whereas the process for the other three is much slower. In one case, where the victim was killed by members of the CPN-M, the CPN-M stopped the committee from forwarding the application to the Ministry even though the police report stated that the victim was killed by the Maoists. (The case is listed below - Devi Siuthani)

In Dolakha, one out of the two disappeared people has received "interim relief". In Bardiya, 300 applications were filed claiming disappearance. Out of these, it was decided that 278 were eligible for "interim relief". As of mid-July 2010, 208 applicants have received the money. The district committee normally holds meetings once a month and applications thus accumulate during the interim period.

The victims claim that when they request information about why the relief is coming in batches, the DAO claims there is a lack of budget and therefore the release of funds is inadequate.

On the other hand, reports from the district also point to the continuous updating of the data regarding the victims of conflict as is the case in Bardiya and Ramechhap. This might explain the delay in some cases. But there are also cases where even those who were enlisted in the earliest phase of the work as victims by the Special Task Force have faced delays in accessing relief owing to the release of inadequate funds.

Dearth of resources also affects the distribution of scholarship for the children of the victims as explained above. In Rupandehi, for instance, only a maximum of two children per victims' family have been accorded scholarships during the fiscal year 2066/67 even though three of the children of the victims are eligible for scholarships under the policy.

### *Impractical procedures and inconsistent implementation*

The Standards state that in order to claim the “interim relief” for the families of people who died during the conflict as a result of the conflict, an application should be made to the DAO.<sup>43</sup> For single women among the “conflict victims”, the application needs to be submitted to the District Development Committee; for treatment of injuries and disabilities, the application needs to be submitted to the District Public Health Office; for the “conflict victims” children’s education the application needs to be submitted to the District Education Office and for the destitute, extremely poor “conflict victims” children, the application needs to be submitted to the Women’s Development Office. This is a very cumbersome process, especially when bearing in mind the lack of education among the majority of the victims. They are made to fill out a number of forms to access the entire range of compensation that they are eligible to apply for.<sup>44</sup>

The victims complain that during the processing of their claims, the stakeholders concerned made comments demonstrating bureaucratic apathy and unnecessary delays. If there were delays in the process they had to stay for a few days at the district headquarters and spend money. Many victims claimed that by the time they received the “interim relief”, they would have spent about 15 to 20% in transport and accommodation expenses.

One possible reason for the delay is that the Chief District Officer (CDO) is the Chairman of all these committees, in addition to his/her core function of being the administrative head of the district, responsible for peace and security, and his/her function as a quasi judicial body empowered to try and sentence a number of public offence and other criminal cases. This puts an unusually heavy burden on his/her shoulders and in such circumstances; s/he cannot be expected to perform highly effectively and

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<sup>43</sup> According to the Standards, the CDO is responsible for verifying the facts about the circumstances of death of the victim and to confirm whether or not the person died during the conflict, because of the conflict (1.1.1). S/he also heads the committee that recommends the scholarship for the children of the dead victims (1.2.4). S/he is also responsible for recommending the names of the single women victims of conflict for the lump sum of 25,000 (1.3.2). S/he also is responsible for recommending the names of the injured for treatment and compensation (2.2.1).

<sup>44</sup> Advocacy Forum’s comments on the ‘The Reparation Guidelines,’ which they have termed a ‘Damp Squib’ because of its inefficiency in addressing the problems of the real victims since it left out the issue of reparation altogether, narrowed down the concept of victim to the citizens only, created categories of victims and excluded the victims of torture, sexual violence, assault, rape, persons abducted for a long period and then released etc. It is insensitive to gender and denies the children the status of victims. See [www.advocacyforum.org](http://www.advocacyforum.org)

efficiently. Some kind of delegation of authority to other officers rather than concentrating all the responsibilities on the CDO may ensure quicker decisions, and more efficient administration of "interim relief".

The largely rural character of Nepal and its poor and uneducated population should have been taken into account better when designing the procedures for the distribution of the money, in the knowledge that a labyrinthine documentation required for the compensation and access to the cities would present difficulties for many victims.

Advocacy Forum has also identified several instances of haphazard distribution of "interim relief". For instance, the interpretation of Section 8 of the *Directives for Providing Economic Assistance to the Families of the Deceased, 2008*, states that in the absence of a close relative of the victim, specified by section 7.4 of the same Directives, the economic assistance shall not be provided to anyone. However, in Rupandehi, when an 18-year-old girl was killed by the then Royal Nepalese Army, her mother, who had remarried as well as her married sister, who was taking care of her vied for the relief money. The mother insisted that she wanted to have a scholarship for her other children in the name of her deceased daughter at the school, and the sister claimed she should get the money as she had been taking care of her sister. Later, the District Administration Office (DAO) after discussions in the presence of the Chief District Officer (CDO), initially divided the relief amount between the mother and the sister. Later on, the mother was asked to return the money. This exemplifies haphazard adherence as neither a mother who has remarried or a married sister has been designated as close relatives eligible to access relief according to the Directives.

In another case reported from Rupandehi district, the money for one of the victims had to be returned because the person who had initially been thought to be dead was actually alive. In Surkhet, 4 disappeared people have taken relief out of the money released for the deceased.

In Bardiya district, there are cases where court order including that of the Supreme Court is ignored and actual victims are deprived of the "interim relief". Advocacy Forum had lodged *habeas corpus* cases in some cases of disappearances. The court ordered that a relief amount of NRs100,000 each to be provided to the victims for the trouble undertaken while lodging the case, expenses for the travel, and



the costs incurred. The same order also mentioned that this relief would not be counted instead of any other relief to be provided to the victim in the future. There were four people who received such relief in Bardiya: Shree Ram Tharu, Jagana Tharu, Tate Ram Tharu and Hari Ram Chaudhary. Later, when the “interim relief” amount for the families of the disappeared was released, even though the names of the aforementioned four were enlisted, the DAO denied the relatives the “interim relief” stating that they had already received the relief following the orders of the Supreme Court.

## **7. Politicization, corruption and other problems**

### *Politicization*

Reports from all the districts sampled stated that political interference is a big problem. Victims and human rights defenders from Banke, Bardiya, Kapilbastu and Jhapa unanimously raised concerns that access to “interim relief” was easier for people with political links and in the remote areas in districts like Myagdi, having no political affiliation also negatively affected easy access to relief.

Having representatives of different government departments in the bodies that are responsible for identifying the victims, verifying information, making recommendations and handing over “interim relief” – especially the involvement of the District-level Security Bodies – in practice means that people close to those responsible for the human rights violations are in a position to decide and distribute “interim relief” to the victims.<sup>45</sup> And the experience of the victims corroborates that this is often what happens as is visible in the reluctance of the police to assist the victims of the state.

The victims also raised concern about the role of the Local Peace Committee (LPC), the formation of which often got delayed due to the political bickering. They also raised issues of LPC recommending political cadres as victims.

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<sup>45</sup> Advocacy Forum, “Govt. sidelines “Essence” in reparation guidelines”, Transitional Justice Newsletter, May-June, 2008

To top it, the VDC secretary who is supposed to make the recommendation is away most of the time and reportedly rushes the recommendation process for politically affiliated victims while those without affiliation are waiting.

The victim's identification team for abduction and disappearance comprises of the heads of the security forces in the district. In such cases, the possibility for biases seems natural. When the perpetrators are one's friends and acquaintances, one cannot remain a hundred percent objective. Can the victim be open with the verification team under such circumstances? Does this not doubly victimize the victims?

In a number of cases where the Maoists were responsible for a disappearance, the victims have faced difficulties in accessing "interim relief", especially during the time the CPN-M was in power. In Jhapa, the cases of disappearance by the Maoists only surfaced after the Maoists no longer held the government according to the human rights defenders' analysis. There are reported cases where political intervention had obstructed an abducted person's access to "interim relief".

*Case: Rana Bahadur Siuthani, resident of Bungdovan VDC, had been abducted by the Maoists in Myagdi district. The field report made by the District Police Office also supported the claim that he had been abducted by the Maoists and disappeared ever since. However, Aajad, the district leader of the CPN-M prevented the task force from recommending his name stating that an investigation was needed to establish whether or not he had been abducted and disappeared by the CPN-M. Even one year after filing the application, the victim's wife Devi Siuthani had not been able to access relief and the Administrative Officer of the DAO claimed that since the Maoists had prevented the task force from recommending his name, the relief process had not been able to move ahead. In this case, when the police report has established that the Maoists had in fact abducted the victim, why is the administration lingering?*

Relief to the displaced is the area that has been most seriously affected by politicization. In a number of cases, political interference has led to the enlisting of the names of displaced people. There are many victims' groups affiliated with different political parties present at the district level. Depending on which political party is in power at the national level or which victim group has influence in that particular district, the "interim relief" is given. (This is not just in the cases of relief for the displaced but also a factor in the distribution of other relief.)

Victims claim that the government has prepared records without proper field inquiry. In the majority of the districts, political parties have included people who are not really displaced in the lists. Many people enlisted as displaced remain reluctant to return to their places of origin, and thus are not able to access the money under the National Policy for the Displaced. Information from Banke, Bardiya and Ramechhap corroborate this.

Political interference therefore has a big role in assisting some victims to access relief and deprives others from having easy access as cases from Baglung, Parbat and Myagdi point to. In these districts, the people with no political affiliation have had delayed access to relief as there is nobody to take initiatives in their favor contrary to the case of the political affiliates.

### *Not victim-centered*

Victims complain that the "interim relief" system is not victims' centric. The impractical implementation procedures compounded by bureaucratic apathy makes it more frustrating to the victims. Victims complain that the system of "interim relief" is generally inconsiderate towards the victims. While a number of categories of victims are left out altogether, those that are entitled to relief also face problems in accessing it due to a number of reasons.

The paperwork to be presented to claim relief is cumbersome given that there are many victims who are uneducated and the information dissemination is not highly effective. An example is the "interim relief" for the people injured and disabled during the conflict. They have two major complaints. The first one involves a very cumbersome documentation procedure in a country where people are neither careful nor aware of the need to maintain medical records etc. The second problem that they cite is that of the requirement to be treated in Nepal in order to be eligible for compensation. Many victims from the Terai chose to go to hospital in nearby India to get treated. They now complain that their ineligibility stems from the fact that there were no doctors in the district hospital to treat severe injuries at that time.

Another example involves the families of the disappeared. The wives of the disappeared are doubly troubled because many of them are uneducated and lack subsistence skills. Since the death of their husbands is yet to be proved, they are neither given the lump sum subsistence fund nor are their children provided education stipend. The proof of death, that the state should give them and they lack

has also led to problems with the inheritance of property that legally belongs to their husbands. Therefore the need to address their needs is exigent.

Some victims also complain that the heads of the district security bodies are in a position to decide whether or not a person is a victim. This translates into the fact that the state victims feel prejudiced and daunted. These are the examples that the victims give to show how the “interim relief” system is not victim oriented.

### *Corruption*

None of the victims complained of corruption or being asked to pay for the services. The problem with the “interim relief” system in the country is not corruption but rather apathy and inconsistent implementation according to the victims.

There were 32 cases of people accepting “interim relief” without actually being victims in Surkhet district. In some of the cases the victims had died of natural causes but their death had been reported as related to the conflict. Those who recommend these applicants are either relatives or other people close to them. Such irregularities are made easier by police not visiting the place of incident and conducting an inquiry but instead just asking for information from the VDC.

## **Conclusions and Recommendations**

We welcome the recognition accorded to reparation and relief as an essential element for sustainable peace in the CPA and other agreements reached after the end of the conflict. However, the “interim relief” scheme suffers from numerous inadequacies. The policies, majority of which have been devised without consultations with victims and civil society organizations working in the field, suffer from inherent weaknesses. Some categories of victims such as those who have suffered torture, sexual assault, rape, and those suffering mental trauma without any visible sign of physical harm have been left out. Inconsistent implementation and problems with information dissemination and distribution of funds have compounded the problem. Therefore, instead of satisfying the victims, the “interim relief”

scheme has made a number of them feel further victimized and left out. There is a need to improve the “interim relief” scheme as well as to learn lessons from it to ensure that future redress and reparation programs do not repeat the same mistakes.

In light of this, we make the following recommendations:

### *Wider redress and reparation policies*

1. Any future comprehensive reparation program should take into account all past schemes to ensure overall fairness and non-discrimination.
2. Reparation, including compensation, should not be seen as a substitute for full redress (including truth and justice) for the victims of human rights abuses. The victims want full redress and reparations. They want to know the truth about what happened and the perpetrators to be punished. According to them the nominal funds that they receive as “interim relief” is no value for the price their loved ones paid. All the victims were in agreement that no money can bring their loved ones back, but a state acknowledgement of what had happened to them, prosecution of the perpetrators and recognition to the victims and assurances that such incidents would not repeat in future would mean sustainable relief to them.
3. The government should make public the status of the disappeared people. On the one hand, the government is not providing the families with the information about their loved ones and is discriminating against them in the distribution of “interim relief”, on the other hand they also lack knowledge about their fate or whereabouts. The government should make it a priority to inform the families about the fate of the disappeared and accord them the appropriate relief accordingly.

### *Interim relief” scheme*

1. The “interim relief” scheme leaves out victims who have been tortured, sexually assaulted or raped, and those who suffered serious mental trauma. This should be rectified.

2. Maintaining consistency in implementation in all districts and across all categories of “conflict victims” would make the process less confusing and set the right precedents. More rigorous adherence to the rule books is mandatory. There are specific rules and procedures set down for the verification of information regarding the status of the person as a victim. In some districts like Surkhet, the rules have been repeatedly flouted. There should also be a proper monitoring mechanism to ensure that there is no duplication and people are not discriminated against.
3. The process of distributing the “interim relief” should be more victims centric and simple. The information about the process should be disseminated in such a way that it reaches the remotest villages and the people are well acquainted with the process when they apply. For those who are beyond the reach of mass media, village leaders, victims’ volunteers, community-based and civil society organizations as well as VDC secretaries may have to be trained and assigned with the responsibility of informing them.
4. Whereas it is important that irregularities are avoided, and therefore proper documented evidence need to be demanded to access “interim relief”, considering the period of conflict when the incidents occurred and the lack of awareness among the victims, some more flexibility may be needed and some alternative sources of verification of information in addition to or instead of the police field inquiry report, and the report lodged with the police by the victim or their family, depending upon the cases and the places where the incidents took place. Information provided to human rights organizations at the time of the violations should be considered as acceptable documentation - without jeopardizing the fairness of the overall scheme.
5. Some delegation of authority is required to ensure that the right people get “interim relief” on time. The Standards for the Provision of Economic Assistance to Conflict Victims, 2008, gives the CDO all the responsibility from identifying the victims, verifying the information, presiding over the meetings to decide who is or not eligible to receive relief. This is impractical because this translates into the fact that distribution of economic assistance is not accorded the importance that is due to it, as the CDO who is the prime mover is divided among so many other responsibilities. Delegation of authority should be considered.

6. Even when there has been delegation of responsibilities among different government bodies, it just adds layers to an already cumbersome process, does nothing to simplify the process but troubles the victims further. Delegating the authority and making government bodies at village level which accept the application also responsible to provide the “interim relief” would be more victim-centered and ensure that victims from the remote areas, like single women, have easier access to the “interim relief”. The distance between the village and the headquarters is a hindrance for some victims.
7. In those districts where the children have only received a small portion of the scholarship, distribution of the scholarship to the victims’ children is an issue worth prioritization, lest the age of eligibility of the children pass thus depriving them of the opportunity.
8. It would be better to give “interim relief” to the victims in the form of installments rather than a lump sum. There is no sustainability in the envisioned reparation plan.
9. The Standards for Providing Economic Assistance to Conflict Victims speaks of providing skill training for the victims to make them competent for national and international employment. This would be very important as it would be sustainable relief for the victims’ families. However, reports from the districts show that so far there has not been any such training in any of the districts covered by this report.
10. Political interference in the process, including that of relief distribution, especially by the Local Peace Committees is reported, causing tension and division within communities. Victims with political association are reported to have had an easier and earlier access to relief and in some cases they have also been reported to have received the “interim relief” repeatedly. This needs to be addressed and a mechanism put in place to monitor the implementation of the scheme and prevent further abuse.
11. If a body with members from the DAO, DDC, DEO and LDC, LPC and VDC representatives as well as a proper representation from different victims’ groups, community based organizations and

individual human rights defenders were made responsible for the identification of victims, sharing of information, planning and implementing the process of distribution as well as monitoring the process and reporting on the discrepancies to the concerned authorities, then the process may be more streamlined. The need for such a body arises because the work of LPC has not been uniform in different districts. This body may be required to meet every 15 days and report the decisions and findings to the DAO once every month. This very body may be empowered enough to provide the alternative evidence in the absence of documented evidence. The inclusion of representatives from different government bodies and victims' bodies may ensure a balance of power and objectivity.

*In addition to the above recommendations to the government, Advocacy Forum is making a number of specific recommendations addressed to the international organizations supporting the Ministry of Peace and Reconstruction in devising reparation policies (such as the UN-OHCHR, International Organization on Migration), the donors supporting Nepal Peace Trust Fund, and the International Center for Transitional Justice:*

1. Review the current overall strategy before committing additional funds for further "interim relief" distribution to ensure a more systematical and effective scheme.
2. Ensure civil society representation in the process of developing plans and policies on reparation,
3. Ensure "interim relief" is not permitted to be considered as a substitute for full reparation, comprising compensation, restitution, satisfaction and guarantees of non-repetition.
4. Do not introduce policies and programs copied from other countries' experiences without having sufficient consultation with victims' groups and civil society organizations working in this field.
5. Ensure transparency and coordination to maximize the time, resources and avoid unnecessary mental and physical burden on victims, victims' groups and local civil society organizations.