

# **Final report of workshop on "Access to Justice and Sustainable Livelihood for Conflict Victims"**

**Kathmandu, 24 November 2006**

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# Content

<b>I. Background and context</b>	<b>3</b>
<b>II. Programme rationale and issues of concern</b>	<b>3</b>
<b>III. Objectives</b>	<b>4</b>
<b>IV. Implementation of workshop</b>	<b>4</b>
<b>V. Programme proceedings</b>	<b>4</b>
<b>IV. Implementation of workshop</b>	
<b>V. Programme proceedings</b>	<b>4</b>
a. Inaugural session	4
b. Second session: Parallel workshops	5
<b>2.1 Verification of conflict victims</b>	<b>5</b>
➤ Problems and challenges	5
➤ Recommendations	5
<b>2.2 Access and guarantee of conflict victims on justice</b>	<b>7</b>
➤ Problems and challenges	8
➤ Recommendations	9
<b>2.3 Access and guarantee of conflict victims on livelihood</b>	<b>12</b>
➤ Problems and challenges	12
➤ Recommendations	13

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**I. Background and context:**

Human Rights situation of Nepal degraded after the Communist Party of Nepal – Maoist (CPN-Maoist) commenced armed conflict in the name of people's war in 1996. Almost 15,000 people lost their lives due to this. Human rights organizations including National Human Rights Commission (NHRC) have reported that more than 1400 people have disappeared from the government side during this period. Similarly, CPN-Maoist has caused disappearance of more than 300 people. The situation of internally displaced peoples (IDPs) is also alarming. About 200,000 people have been displaced from their home. Thousands of them have migrated to India for employment and security. Armed conflict was the root cause for all these problems. Livelihood of conflict victims is at risk from the social and economic perspectives. Source of their livelihood is destroyed. In this backdrop, this programme was conducted to find out effective measures to guarantee access to justice and livelihood of the conflict victims by identifying them.

**II. Programme rationale and issues of concern:**

- a. To identify and collect data of the conflict victims is difficult. The country is in a transition towards lasting peace. Apart from the transition towards peace and democratic system, we have the challenge to identify the real conflict victims. At this juncture, we have to concentrate our efforts to identify, verify and certify the conflict victims for their effective rehabilitation. This will ensure access of the conflict victims to justice and livelihood. Therefore, concrete steps are necessary for verification of the conflict victims. The first issue considered by this workshop was to determine measures for verification of the conflict victims and possible method and policies in this regard.
- b. Livelihood of Nepalese people is in a miserable condition due to severe poverty. Conflict has deteriorated this situation. This made the issue of conflict victims more complicated. The victims have been totally deprived of the means of production and income. The guarantee of basic economic rights was snatched from them. The workshop has attempted to support sustainable livelihood of the

- conflict victims by finding measures to identify them and to involve them in the income generating activities.
- c. Incidents of violent attacks against common public were noted from the government security forces and the Maoist insurgents. This caused a significant humanitarian and physical loss in the people. Similarly, parties in conflict victimized thousands of people through serious crimes against humanity. Hundreds of people died in mass killings and mass ambushing. Therefore, it is necessary to ensure justice to those people who are deprived of their rights. Effective measures are necessary to ensure justice to the victims by bringing the perpetrators to the justice system. The workshop concentrated upon determining strategies and activities to ensure justice for the victims.

### **III. Objectives:**

- a. To determine measures to identify, verify and certify the families of conflict victims;
- b. To determine practical measures, strategies and instruments to ensure access to justice for the conflict victims;
- c. To determine what measures and activities can be conducted in favour of income generation and sustainable livelihood of victims.

### **IV. Implementation of workshop**

The workshop was divided into two sessions. The first session was for inauguration and inaugural speeches. Parallel workshops / discussions in three separate issues were held in the second session. The issues of the parallel sessions were as follows:

- a. Verification of conflict victims;
- b. Access and guarantee of conflict victims on justice;
- c. Access and guarantee of conflict victims on livelihood.

After the inaugural session, the participants were divided into three groups. Suggestions on problems and solutions were provided in the discussions of the parallel sessions held with separate workshops.

### **V. Programme proceedings:**

**a. Inaugural session:** Mr. Subash Chandra Nemwang, Hon'ble Speaker, Mr. Rajendra Pande, Hon'bne Minister for Local Development, Mr. Laxman Aryal, former Justice of the Supreme Court, Dr. Shibesh Chandra Regmi, Country Director, Action Aid Nepal and Mr. Nutan Thapaliya, senior human

rights defender and Chairperson of FOHRID addressed the inaugural session. (See Annex 1 for summary of the views expressed).

## **b. Second session: Parallel workshops**

**2.1 Verification of conflict victims:** Mr. Bishnu Bhusal from ICPD coordinated this parallel workshop. Advocate Punya Prasad Khatiwada presented his working paper entitled "Verification of conflict victims: necessity, challenges and measures". (See Annex 2 for the working paper). The workshop was attended by 28 participants. (See Annex 2.1 for names and views expressed by the participants).

### **Problems and challenges:**

- The physical, mental and property loss caused by conflict is very much serious. Though these losses are talked widely, the data about the victims is not complete, reliable and trustworthy. This has made the solution of their pleas complicated. Major political parties, governmental and non governmental sectors have not conducted serious study on the impact of conflict. Clear vision and strategy is still lacking in verification. Concerned authorities are yet to make explicit commitments in this regard.
- Rehabilitation of the conflict victims may be shadowed at present when the political issue has received national priority. It is feared that instead of serious efforts to resolve the problems of the conflict victims, the state may opt to ignore this issue.
- The issue of verification of the conflict victims is complex and disputable. Conflict has laid both direct and indirect impacts. The direct impact may be measured but it is very much difficult to find out a standard to measure indirect impact. Likewise, it is equally difficult and challenging to find out the real size of victims. Therefore, the issue of verification of the victims may be shadowed and deferred. Civil society has also failed to raise this issue with due importance. They must watch and create constant pressure in this regard.

### **Recommendations**

- The first step is to be clear about the verification of the victims who have borne physical and mental loss during the conflict.

- Verification of the victims will assist in collection of evidence pertaining to the violations and grievances. This will play important role in ensuring justice to the victims. Therefore, verification and measurement of conflict victims is necessary for immediate rehabilitation, compensation, assistance, cooperation, socialization, reconstruction, ensuring comprehensive benefit of the victims, human rights, democratic norms and justice.
- Verification cannot be conducted from the strategic point of view only. Practical investigation is necessary for this. The Government of Nepal and the political parties should address the problems of conflict victims appropriately from the humanitarian ground.
- **Measurement of the conflict victims:** Serious violation of the human rights and international humanitarian law should be taken as a standard to verify conflict victims. The types such as killed / murdered, widow / widower, orphans, disappeared, abducted, imprisoned, houses destroyed or dismantled, property lost, raped, tortured, mutilated, displaced from locality, physically injured, deprived of employment should be considered in verification.
- Various means and instruments can be adopted for verification of the conflict victims. A high level fair, independent and powerful "Truth Commission" should be established for this purpose. The Commission should be authorized to search, investigate and interrogate at any custody or any place without prior notice. The Commission would work with people's participation and support in a reliable way if it works in close collaboration with the political parties, victims' representatives, human rights activists and other stakeholders. This will facilitate effective identification, verification and data collection of the conflict victims.
- Verification, at one level, helps to identify the conflict victims; and at the same time, it contributes transitional justice helping to avert similar incidents in the future. Strong political will power and commitment is necessary to guarantee this situation. The issues raised in the workshop were as follows:

- a. As the interim constitution which is in the pipeline is a document for transitional justice and political commitments, it should bear clear provision for the publicization, verification and justice to the conflict victims.
- b. An effective law should be formulated and implemented with clear indication of method and process of verification.
- c. Special court should be established to ensure justice to the victims and punishment to the perpetrators according to the recommendation of the "Truth Commission".
- d. Civil society and the NGOs working in the human rights sector should initiate serious discussion on the verification of the conflict victims and "Truth Commission." They must play the role of watch dog in this regard.
- e. Cooperation among political parties, civil society and victim is necessary to succeed the verification process.
- f. Discussion is necessary to minimize the gap between the victims and perpetrators.
- g. The problem cannot be resolved without effective identification of the victims. Hence, it is necessary to establish access of those involved in the verification to the community level. The victims should be categorized according to the level of their grievances for immediate relief and justice. The NGOs should play the role of facilitator in sensitizing people and verification.
- h. Technical assistance of the UN can be sought to establish "Truth Commission" in Nepal.
- i. Verification can be conducted by involving government agencies, political parties including CPN-Maoists and civil society at the district level. The journalists and rights activists can contribute by monitoring this process.

## **2.2 Access and guarantee of conflict victims on justice:**

Mr. Pradeep Pokharel, Chairperson, HUDEP coordinated this workshop. Advocate Raj Kumar Siwakoti, Secretary General of FOHRID made presentation entitled "Access of conflict victims in justice and transitory period: A discussion paper" (See Annex 3 for the working paper). Altogether 17 participants participated this workshop (See Annex 3.1 for names and views of the participants).

### **Problems and challenges:**

- Major agenda at present is the transitional justice, management of conflict victims, sustainable peace and strengthening inclusive democracy. We are in the transition towards reinstatement of democracy and peace. During this transitory phase, we have to address the issue of verification, access to justice for the conflict victims and transitional justice. Major challenge facing at present is to bring the grievances and injustice into justice system. It is in fact a complex process to help the society badly disturbed by the conflict and to reassure rule of law.
- In light of the fragile law and order situation triggered by the Maoist insurgency, the situation of the divided populace and grievances of the victims is appealing. It is necessary to address lack of many things in such a transitory phase. We lack political will power, effective judiciary, domestic technical capacity, means and financial resources, people's support to the government, respect to human rights and so on.
- The rights of victims have not been implemented and guaranteed. Neither law is formulated for effective and immediate relief nor access to equal and effective justice is guaranteed.
- Impunity culture is barring access of conflict victims to justice. We have not been able to identify who should be termed as victims. The process for compensation can be more expensive than the real compensation if we fail to work properly.
- Implementation of the justice for the victims is weak. Existing justice system is not enough for ensuring access of the conflict victims to justice as criminal investigation system is weak. Petitions remain helpless before political pressure.
- More than 33,000 conflict victims are taking shelter in the capital alone. Their grievances are shadowed for political cause. There is a tendency to escape problems by showing one or the other cause. History shows, it is equally possible that the perpetrators will be seen dominant in the political arena within a short time.

## **Recommendations**

It is necessary to balance between the objectives of accountability, truth seeking, reparation, peace, democracy and ensuring a government ruled by law. Common framework among stakeholders is imperative for this. Implementation is not possible without strong political commitment. We must prepare a comprehensive political agreement to take care of the conflict victims. Special measures can be taken for the protection of the victims and ensuring their access to justice. The State should take following actions immediately to ensure access of the victims to justice:

- a. Information should be disseminated through public and private means of communication to all those victims of the violation of international human rights and humanitarian law regarding available treatment for them.
- b. Arrangements should be made to ensure hearings at independent and fearless environment by reducing the difficulties of the victims, their families and representatives. Their security during and after the hearing should be ensured. Their right to privacy should be protected from illegal use.
- c. Necessary assistance should be extended to the victims seeking justice.
- d. Opportunity for legal action should be provided to the victims of the incidents of violations of international human rights and humanitarian law.
- e. Formulation and implementation of an effective law should be ensured to form a Truth Commission and a Special Court to prosecute the cases pertaining to the conflict victims, eradicate impunity and to control the incidents of human rights violations.
- f. The State should develop a procedure to claim compensation and reparation for the victims and to ensure its attainment for the victims. The right of effective and immediate treatment in the incidents of violation of human rights and humanitarian law should be guaranteed by the State. The domestic provisions should not be biased.
  - Case filing, investigation and punishment for the perpetrators from the State or non-State side who are involved in the incidents of human rights violations should be ensured. Though the investigation and case filing rests in the State, the victims,

their families or representatives should also be entitled to file cases individually.

- The State should implement national plan of action for reparation and other necessary assistance to the victims. Judicial actions should be taken for reparation and compensation.
- Rehabilitation should be guaranteed. Freedom, human rights, identity, family life, relocation to his or her own locality should be dealt in a package. In cases of losses measurable in financial terms, compensation should be provided considering the situation of incidence and gravity of violation. Loss of employment, education, social benefits, sources of livelihood, moral loss, assistance of expert, expenditure in medical treatment, expenditure in mental and social services fall in this category.
- Assurance of non-recurrence of human rights violation and publicizing of the past incidents are the points of departure for 'satisfaction'. Searching the disappeared people, identification of abducted children, handing over dead body of those who have been killed, right of the victims family to perform final rites are the prerequisites for ensuring satisfaction. Besides measures should be taken to re-establish the lost dignity and rights of the victims and their families, formal declaration or legal decision in this regard, acceptance of facts, public declaration with acceptance of responsibility, legal and administrative action against those involved in violations. Government should fully guarantee and implement them.
- State should 'Guarantee non-recurrence' by guaranteeing human rights of citizens through strengthening court, amendment of law, establishment of effective instruments, appropriate procedure, international standards of justice and fairness.
- Truth Commission should be established for ensuring reparation. Special court and tribunals should be established for bringing the conflict victims and perpetrators into justice system. Integrated, complementary and common perspective

among all the stakeholders is necessary to arrange rule of law and transitional justice. State and the insurgent group should together adopt and comply with such provisions with due honesty. This helps to end lack of rule of law during the transitory period ultimately contributing in the effective national legal system for easy and accessible transitional justice.

- National policy and special legal provisions are necessary to ensure justice for the victims of the decade long conflict. They should address the need of livelihood, compensation, reparation, rehabilitation for the victims. The facts about verification and identification of the physical and human loss during the conflict should be unveiled. The perpetrators from the government or insurgent side, who were involved in the violations of human rights and humanitarian law should be identified.
- There are instances where the perpetrators involved in the violation of human rights and humanitarian law are punished with the laws having retroactive effect, e.g., the cases of Augusto Pinochet, Slobodan Milosevich and Charles Taylor. The efforts and experiences of South Africa can also be taken into account to ensure justice for the conflict victims. Truth Commission may be established to investigate the cases of violations by dividing the time 1. prior to 2052 Falgun, 2. 2052 Falgun to 2058 Asoj 18, 3. 2059 Asoj 18 to 2061 Magh 19, 4. 2061 Magh 19 to 2063 Baisakh 11. The reports of Mallik Commission and Rayamajhi Commission can be considered for reference. Campaign should be intensified for the ratification and implementation of Rome Statute 1998 of the ICC. NGOs should be allowed to represent the victims.
- The term 'conflict victims' should be defined properly. The proposed interim constitution has the provision of 'Truth and Reconciliation Commission (TRC).' The role of TRC should be reformatory rather than retributive so that the conflict would not recur. Justice should be attempted for reform. Victims should be identified from the community level. The demands of

victims should be investigated and practical suggestions should be made. Time frame for justice should be determined.

- NGOs are required to lobby for the formation of TRC. Victims must be involved in the study about them. An ad hoc tribunal should be established to punish the perpetrators involved in the serious incidents of violation of human rights and humanitarian law.

### **2.3 Access and guarantee of conflict victims on livelihood:**

Dr. Keshav Khadka, Economist coordinated this parallel workshop. Advocate Birendra Prasad Thapaliya presented a paper entitled "Access of conflict victims on livelihood: A concept paper" and Advocate Jaya Prasad Paudel presented paper on "Access of conflict victim women on livelihood." (See Annex 4 for the working papers). Altogether 29 people participated this workshop (See names and views of the participants in Annex 4.1).

### **Problems and challenges:**

- Economic, political and social situation of Nepal became very miserable due to conflict. The country faced irreparable physical and human loss. Rural area was badly affected. Tens of thousands of people lost their sources of livelihood such as family members, property and employment. Systematic study regarding the victims of conflict is yet to be conducted.
- Conflict created crisis in the economic capacity, production capacity, social security and development of the country. Capital displacement and loss in public investment were visible. The State deducted development and social sector expenditure to arrange money for weapons laying negative impact in the commerce, business, investment and social sectors. Source of livelihood of the conflict victims is still not recovered. Therefore, management and livelihood of the conflict victims should be the priority issue of concern at present.
- Running household is the basic necessity for family but the conflict victims are deprived of this. The situation of livelihood of the conflict victims from indigenous, janajatis and dalits is most at risk and the so called upper class people are also targeted. Women, children, rural

people, teachers, students were also targeted. Many local political activists have been dislocated. In fact, conflict has affected more than 40 percent of the total population at one or the other level.

- The mental impact of conflict is equally alarming. Actual data of the impact of conflict has not been collected. Indirect impact is far more than the visible economic loss. Political and mental loss can be accounted in this category. The victims cannot express their grievances freely due to various types of fear and discomfort.
- End to conflict and restoration of peace is not possible till the grievances of conflict victims are addressed properly. Economic growth of Nepal is swinging around 2% whereas the closest neighbours China and India are enjoying 10% and 8% growth respectively. This should also be viewed in the context of conflict. Improvement in economic growth should be one of the major priorities in the post conflict era.
- Criminal activities increased under the guise of conflict. The persons with criminal mind may continue their activities even in the post conflict period. The worse is that they may get protection in the changed political situation also. This can further encourage criminalization of politics and politicization of crime.

### **Recommendations:**

The tension and trauma borne by the conflict victims should be addressed to ensure livelihood of the conflict victims. Livelihood opportunities should be provided to the family members of the victims. Likewise, access to justice, truth reconciliation and bringing perpetrators to the justice system are necessary. Hence, we should create an environment where the conflict victims can feel and express that they are also entitled to enjoy the rights of the citizens. Access and control to the resources are the prerequisite for livelihood. State should guarantee following specific rights to ensure livelihood of the conflict victims:

- a. Access to dignified life including food, shelter, clothes and livelihood.
- b. Right to self-determination in the social, economic and cultural fields.
- c. Access and ownership in the natural resources.
- d. Empowering men and women alike for employment opportunities.

- Impact of the 11 years long conflict should be evaluated. The disappeared people should be unearthed. Facts about the humanitarian and physical loss caused by the conflict should be disclosed. For this purpose, formation of Truth Commission and verification of the conflict victims should be accomplished immediately.
- Rehabilitation starts with ensuring an environment for safe return of the displaced to their land and assurance of their involvement in the social activities. Both the parties who were involved in conflict should explicitly guarantee this right to the victims. The relocated people should be guaranteed their immutable right to own and utilize their abducted resources and property. More complex is the problem of those who have lost their family members including source of livelihood. Hence, specific plan of action to reach the target community is necessary.
- Congenial environment is necessary for return of the displaced people to their home. Maoists should be flexible to ensure this environment. Programmes to help easy return of the victims to their home are necessary. The government should introduce income generating activities, micro-finance, employment generation activities, skill development programmes for them. Those injured during the conflict should be provided with the facility of adequate treatment. Victims should be enabled to claim and express their rights without any fear or fervour.
- Victims should be treated solely as victims. Special law is necessary for protection and guarantee of their rights. Such a law can ensure livelihood for those who are bereft of the source of livelihood.
- It is necessary to take into account the positive aspects of conflict while resolving it. The process of conflict management should be taken as an opportunity to modernize society. After providing some training, we can ensure that the displaced people look for new sources of employment and income rather than returning to the less productive agriculture. Agrarian

reform can be initiated through redistribution of land and ending land tenure system.

- The feeling of insecurity is also worthy to address. Rights of everyone should be ensured equally. Government can contribute in this regard by developing the skill of the victims.
- Livelihood should be guaranteed by providing access to fundamental resources. Short and long term strategy plan is necessary to address the problems of victims. A mechanism should be prepared for relief distribution. One window system should be applied for relief distribution.
- Maoist leaders and activists should meet the victims, interact with them and beg for pardon with them to make room for reconciliation. The victims should not be discriminated in the categories 'from the Maoists' and 'from the government', but they should be addressed in a single package. All party committee should be formed in this regard.
- International experiences regarding management of conflict victims should be taken into consideration to formulate policies to implement in Nepal. Role of government should be clearly defined. We must be clear about the mechanism and activities.
- Special training package should be conducted in the rural areas targeting the conflict victims, dalits, women and deprived communities. The products can be sent to the market through cooperatives. Evaluation of such programmes needs to be conducted.
- Social conflict can be transformed through guarantee of the means of livelihood. National census is necessary to determine the needs of conflict victims. Record of the business people, entrepreneurs, farmers, occupational groups who are affected from the conflict should be maintained. These things should be initiated from the grassroots level.
- Measures to resolve the problem should be identified through intensive discussions. New training for the victims will open

door for finding alternate source of employment and entrepreneurship. Unskilled labourers should be turned into trained and skillful employees.

- Economists should be involved to prepare programmes for the sustainable livelihood of the conflict victims. The decisions and programmes should be participatory. Apart from the fundamental necessities, the government should provide education, health and employment for them.
- Foreign employment is also an alternate to assure livelihood for conflict victims. State should be cautious to ensure that those returning from foreign land do not involve in conflict again. Formation and implementation of TRC will help to ensure non-recurrence of violence. Equal and effective education is necessary to enable citizens. Transportation should reach in every corner of the country. Reform in the behaviour of the bureaucrats and politician is necessary for good governance. The centre should focus development activities in the conflict prone areas.
- Citizen rights should be ensured by decentralization. Mechanisms for conflict resolution should be prepared at the local level. NGOs and government should share their hands for resolving all these problems. NGOs can play role in creating awareness and policy reform.

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