

Beyond Relief

August 2013

Addressing the Rights and Needs of Nepal's Wives of the Disappeared

Nepal's internal armed conflict (1996–2006) continues to impact survivors of human rights violations and their family members, among whom are many hundreds of wives of victims of enforced disappearance. Nearly seven years on from the signing of the Comprehensive Peace Agreement (November 2006) key questions remain. How are the wives of the disappeared coping with the prolonged uncertainty of this ongoing violation?¹ To what extent has the government's Interim Relief and Rehabilitation Program (IRP) addressed the particular challenges that these women face?²

Underlying these questions are two important principles. First, as Nepal's Supreme Court recognized in June 2007, survivors and family members have a right to interim relief in order to sustain themselves on their "long road to justice" for conflict-era crimes.² Second, justice or the "right to remedy" for serious crimes under international law is a right of victims and their families. For the families of victims of enforced disappearance this includes the inalienable right to know the truth about the fate and whereabouts of their loved ones and for those responsible to be prosecuted and tried.³

Findings from earlier research already pointed to the fact that most human rights reports focus primarily on bodily harms, which, though critical, can miss many of the broader human rights dimensions that affect women, including their vulnerability to marginalization and poverty.⁴ As a result, studies often neglect to recommend what steps should be taken to ensure that women's needs are addressed. In an endeavor to better understand the impact of enforced disappearances on the wives of the disappeared in Nepal and respond to the questions above, ICTJ undertook, with the support of UN Women, research among these women in 20 Nepali districts.⁵

TABLE OF CONTENTS

Patterns of Enforced Disappearance	3
Profile of Victims and Respondents	4
Economic Impact of Enforced Disappearance	5
Social Impact of Enforced Disappearance	7
Government's Legal Obligations and Responses to Enforced Disappearances	10
The Interim Relief Program	12
Impact and Challenges of the IRP for Wives of the Disappeared	12
Conclusions and Recommendations	14

¹ Enforced disappearance is considered a "continuing" human rights violation until the fate or whereabouts of the victim is determined. See Human Rights Council, 16th Session, Paragraph 39 (General comment on enforced disappearances as a continuous crime), U.N. Doc. A/HRC/16/48, January 26, 2011.

² Supreme Court of Nepal, Rabindra Prasad Dhakal on behalf of Rajendra Dhakal v. Government of Nepal Ministry of Home Affairs and others, habeas corpus writ No. 3575, 100 and 27 other petitions, June 1, 2007. SC Bulletin, Special Issue 80 (June 2007).

³ See UN Commission on Human Rights, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. UN Doc. E/CN.4/2005/102/Add.1, February 8, 2005.

⁴ See ICTJ, "From Relief to Reparations: Listening to the Voices of Victims" (2011); Advocacy Forum and ICTJ, "Across the Lines: The Impact of Nepal's Conflict on Women" (2010); ICTJ, "Nepali Voices: Perceptions of Truth, Justice, Reconciliation, Reparations, and the Transition in Nepal" (2008).

⁵ From October 2012 to January 2013, ICTJ conducted a survey with 462 wives of the disappeared in Baglung, Banke, Bardiya, Dang, Dhading, Jhapa, Kailali, Kanchanpur, Kapilbastu, Kaski, Kathmandu, Kavre, Morang, Nawalparasi, Rautahat, Rolpa, Siraha, Sunsari, Surkhet and Tanahu. The districts were chosen on the basis of reported incidents of enforced disappearance. While the sample was not constructed to be statistically representative, because the focus was not principally quantitative, nonetheless in the course of the research approximately one-third of wives of the disappeared responded to the survey. Participants in Bardiya (131) and Rolpa (81) represent nearly half of the total number surveyed. Further, 13 focus group discussions (FGDs) were conducted in 12 of the 20 survey districts (Baglung, Banke, Bardiya (2 FGDs), Dang, Dhading, Kailali, Kanchanpur, Kapilbastu, Kavre, Rolpa, Siraha, and Surkhet). The majority of the 32 researchers were conflict victims and in some cases relatives of the disappeared. They were: Archana Chaudhary, Bhagiram Chaudhary, Bina Chaudhary, Binay Kattel, Bipin Gautam, Chandra Kala Upreti, Durga Devi Karki, Gita Rasaili, Indra Gyawali, Kalpana Poudel, Kashi Ram Dang, Lila Devi Tamang, Mangala DC, Mathura Panta, Maya

Beyond Relief: Addressing the Rights and Needs of Nepal's Wives of the Disappeared

Authors and Contributors

John Tyynela is a Canadian lawyer with experience of working with the UN and INGOs on human rights and advancing post-conflict justice reform in transitional contexts. He worked in Nepal from 2006–2013.

Lucia Withers is ICTJ's senior associate and head of office for Nepal.

Prabina Bajracharya is senior program officer for ICTJ-Nepal.

This briefing paper is based on the findings of research led by **Reshma Thapa**, former senior program officer at ICTJ-Nepal, with the support of **Bhupendra Khanal**, program associate at ICTJ-Nepal, and a team of 32 field researchers that included conflict victims and their families.

The research reinforced the importance of truth and justice: common to all respondents is the unresolved pain of the enforced disappearance and the continued desire to know what has happened to their husbands. This is the persistent backdrop shaping all other aspects of the daily experience of wives of the disappeared. These experiences include chronic economic, social, and cultural hardships. While such hardship is not unusual in Nepal, for the wives of the disappeared there are added dimensions that relate specifically to the uncertainty about what happened to their husbands and are directly linked to the fact that their husband's fate is unknown and their legal status is undefined.

The majority of women were found to be worse off since the disappearance of their husbands. Having lost the sole breadwinner, they have had to adapt, find sources of income, and in many cases manage upturned lives. This already precarious situation is exacerbated by the fact that land or other property to which they would be entitled if their husband were dead or not physically present cannot be obtained because their husband is disappeared—a situation that has no legal status under Nepali law.

Social and cultural pressures also result from a situation in which these women are not considered fully widows, or wives, or divorced from their husbands. Their victimization through enforced disappearance, in other words, is made worse in many cases by social norms that lead to isolation, marginalization, and vulnerability to other harms. Many have faced social pressure to declare their husband deceased and to remarry. This social vulnerability has also been accompanied by varying degrees of discrimination and harassment by neighbors, members of the broader community, and public officials, and social exclusion.

The wives of the disappeared have not, however, been entirely without assistance. Under the IRP, first established by the Government in 2007, they are entitled to and in most cases have received a range of benefits, including cash payments, scholarships for children, and skills training. In the process of being designed is a program for psychosocial support to “conflict affected persons,”⁶ for which these women may also be eligible.

The majority of the research respondents perceived a positive impact from the IRP.⁷ However, the mainly financial benefits provided to them do not address broader economic, social and cultural difficulties that are specific to these women, which continue to deny them the opportunity to rebuild their lives. Responding to these harms requires targeted measures, ideally as part of a comprehensive reparations program. In accordance with international norms, efforts to establish the fate and whereabouts of the disappeared and to hold to account individuals responsible for such acts should also be accelerated.

In the meantime, however, there are several practical measures that, if taken, could immediately improve the situation of the wives of the disappeared. These include:

- **Ensuring recognition before the law of victims of enforced disappearance**, for example through the issuance of a “declaration of absence by reason of enforced disappearance” which would also have the effect of addressing some of the legal consequences to wives of victims, including in relation to the status of marriage, inheritance rights, and the management of property.

Gurung, Muna Shrestha, Nanda Shrestha, Nanda Ram Budha, Nanda Ram Poudel, Niranjana Chaudhary, Nirmala Bhatta, Poonam Sijapati, Radhika Sapkota, Ram Kumar Bhandari, Rupesh Shah, Sabitri Khadka, Seema Oli, Shanti Paswan, Shantona Rokka, Shree Kumari Rokka, Tulsi Bhattari, and Yama Kumari Dhakal, A social science research institution, Blitz, compiled and processed the quantitative survey results.

⁶ The guidelines for the IRP use the term “conflict-affected persons,” which does not explicitly recognize beneficiaries as victims who have suffered human rights violations.

⁷ Previous reports by ICTJ and others have noted that the rapid provision of relief through the IRP has been important for victims. However, they also found inequality and unfairness among conflict victims in their experience of accessing benefits, of vulnerability in the process to political influence and manipulation, the inexplicable exclusion of rape and torture victims from relief, the unfair distinction between wives of the disappeared and wives of the deceased resulting initially in lower benefits for the former, arbitrary limitations on education scholarships, and a lack of targeted monitoring and evaluation. See, for example, Advocacy Forum, “Discrimination and Irregularities: The Painful Tale of Interim Relief in Nepal” (2010); International Organization for Migration, “Report on Mapping Exercise and Preliminary Gap Analysis of the Interim Relief and Rehabilitation Programme: Interim Relief and Rehabilitation to Victims of Nepal's Armed Conflict” (2010); ICTJ, “From Relief to Reparations: Listening to the Voices of Victims” (2011).

- **Prioritizing access to land title by wives of the disappeared** in order to secure established legal interests in ancestral property without requiring the wife or relatives to declare the disappeared person as deceased.
- **Expediting the issuance of identity cards for families of the disappeared and other victims of human rights violations** as a means of facilitating access to relief, future reparations programs, and government services, while taking care to consult with victims on the policy and its administration.
- **Strengthening ministerial coordination to prevent gender-based discrimination** in accessing government programs and services, and ensuring victim consultation on and participation in any programs that have implications for them to ensure their responsiveness to victim needs and aspirations.

Patterns of Enforced Disappearance

Enforced disappearances were among the most widespread human rights violations committed during Nepal's 10-year armed conflict.⁸ Based on a review of approximately 30,000 documents and cases from the National Human Rights Commission (NHRC) and human rights organizations and its own investigations, the UN Office of the High Commissioner for Human Rights estimates that 9,000 serious violations of international humanitarian law or human rights law may have been committed during the conflict. Categorized by the type of violation committed by both state and non-state perpetrators, they include 3,400 reports of individuals who went missing.⁹ Of these, some 1,400 remain unaccounted for, the majority of which are believed to be victims of enforced disappearance.¹⁰

The number of enforced disappearances climbed dramatically between 2002 and 2004, following the deployment of the Royal Nepal Army (RNA)¹¹ in November 2001 against the Maoists, with most cases linked to incidents in the mid-western and central regions, as well as the Kathmandu Valley.¹² The state is alleged to have been responsible for the vast majority of reported cases. According to a 2004 report by the UN Working Group on Enforced and Involuntary Disappearances (WGEID), individuals suspected of association with the Maoists were typically arrested from their homes by security personnel (most commonly the military) and taken to army barracks where they were held without access to their family or lawyers and frequently subjected to torture and ill-treatment.¹³ However, the then Communist Party of Nepal (Maoist) (CPN (Maoist)),¹⁴ was also responsible for disappearances following abduction, including of civilians who they suspected of

⁸ Accepted definitions of enforced disappearance are included in the International Convention for the Protection of All Persons from Enforced Disappearances Convention (Disappearance Convention) as an autonomous crime and in the Rome Statute of the International Criminal Court (Rome Statute) as a crime against humanity. Core elements of the offence contained in both are an apprehension followed by denial of that apprehension. Under the Disappearance Convention, the conduct is carried out by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state. Under the Rome Statute the conduct may also be carried out by a political organization. For the purposes of this report, violations committed by both state and nonstate actors are addressed.

⁹ OHCHR, "Nepal Conflict Report" (2012), www.ohchr.org/EN/Countries/AsiaRegion/Pages/NepalConflictReport.aspx

¹⁰ Figures on the number of enforced disappearances vary. The International Committee of the Red Cross has received 3,868 reports regarding the disappearance of a relative in relation to the conflict, of which it reports that 1,401 are "missing." See Nepal Red Cross Society and ICRC, "Missing Persons in Nepal, Updated List 2012" (August 2012), <http://www.icrc.org/eng/assets/files/2012/missing-persons-nepal-2012-english.pdf>. According to the Relief and Rehabilitation Unit (RRU) of the Ministry of Peace and Reconstruction, 1,517 families of victims of disappearance have been registered under the IRP. Figures provided by RRU to ICTJ, April 2013.

¹¹ The Royal Nepal Army was renamed the "Nepal Army" in 2006.

¹² The UN Working Group on Enforced or Involuntary Disappearances reported Nepal as the country with the highest number of new disappearances two consecutive years (2003 and 2004). See UN Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/2005/65, December 23, 2004.

¹³ Report of the Working Group on Enforced and Involuntary Disappearances to the Human Rights Commission, Addendum, Mission to Nepal, UN Doc. E/CN.4/2005/65/Add.1. January 28, 2005.

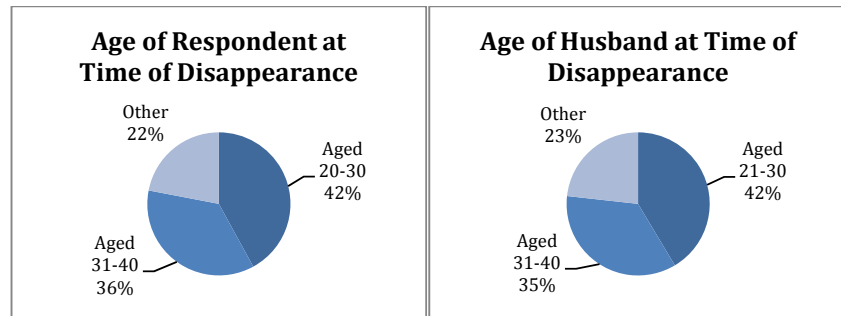
¹⁴ The Communist Party of Nepal (Maoist) (CPN (Maoist)) later became, and currently is known as, Unified Communist Party of Nepal (Maoist) (UCPN (Maoist)). For the purpose of this report the name CPN (Maoist) is used.

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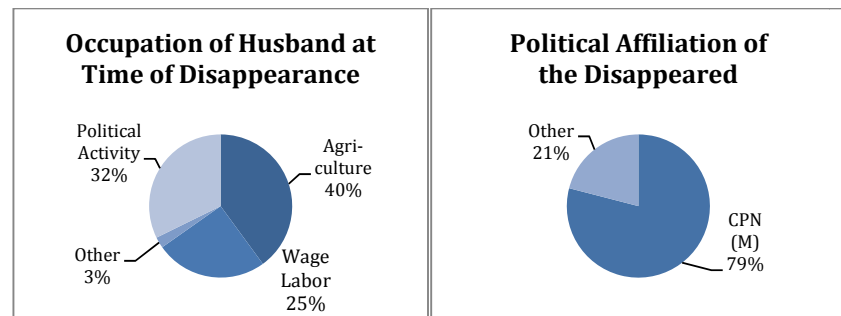
collaborating with security forces or spying. According to a 2009 report by the NHRC, of the 835 cases in its archives, 219 cases “tantamount to enforced disappearance” were carried out by the CPN (Maoist).¹⁵

Profile of Victims and Respondents

Almost half (47%) of the disappearances covered by this paper occurred during the peak period of disappearances in Nepal. The rest occurred outside this period, between 1996 and 2006. Approximately 90% of the missing in Nepal are male and some 66% were married when they were “disappeared” or went missing.¹⁶



Close to 42% of respondents were between the ages of 20 and 30 at the time of their husband’s disappearance, and 36% were between 31 and 40. One in ten (11%) respondents had remarried at the time of the survey. When disappeared, most of the husbands of the 462 respondents were between 21 and 30 years old (41.8%) or between 31 and 40 (35.7%). Some 40% were engaged in agriculture, 32.3% in some form of political activity, and 25.3% in wage labor (wage labor typically includes paid agricultural labor, construction, factory labor, or household labor/domestic help). Respondents identified 46.3% (214 of 462) of victims as a member of a political party, with the majority (79%) linked to CPN (Maoist), including 98% linked to CPN (Maoist) in Rolpa, 61% in Bardiya, and 87.5% in Kathmandu.



Respondents identified members of the CPN (Maoist) as responsible for the disappearance of their husbands in 11% of cases. State responsibility was attributed in 80% of cases, and 9.3% were unable to identify the responsible institution. In Surkhet, 54.5% of the 11 respondents identified CPN (Maoist) as responsible. The RNA is identified as responsible in 43.9% of all institutionally identified perpetrators (state and non-state), with higher levels in some districts: Sunsari (50%), Jhapa (50%), Kathmandu (53.3%), Kavre (53.3%), Banke (55.3%), Bardiya (61.8%), Dang (69%), and Dhading (72.7%). In Rolpa, when asked about responsible perpetrators, 40% (of the 81 respondents) used the word *state* to describe the perpetrator, while others directly referred to the RNA (34.6%), Nepal Police (12.3%), and the Armed Police Force (1.2%). The *Pratikar Samiti* (Village Defence Committee) was identified as responsible for the

¹⁵ National Human Rights Commission, “Summary Report on the status of enforced disappearances in Nepal,” (August 2009), 8. Not available on NHRC website, hard copy in ICTJ files.

¹⁶ Private communication with ICRC, July 10, 2013.

disappearance in 1.1% of all cases (across districts), contrasting with their responsibility in 38.5% of disappearances in Kapilvastu (i.e., 5 of 13 disappearances).¹⁷

Of the interviewed women, 90% described themselves as “Hindu,” but there is important variation in local cultural beliefs and practices that shape the responses even within the self-described Hindu population. With respect to caste, respondents described themselves as Dalit (10.1%, from both Hill and Tarai), Janajati (23.4%), Brahmin Chhetri (26.2%), or in some cases, by place, from the Tarai (38.1%).¹⁸

One in five respondents had some level of education, formal (20%) or informal (41.1%). Of those with some education, 39% still considered themselves illiterate. Over 300 of the 462 respondents (or 65.6%) reported membership of a civil society or community-based organization, including conflict victim groups (58.7%), women’s groups (49.2%), and savings groups (42.2%).¹⁹ Of these, about 90% joined these groups after the disappearance of their husband.

In response to a question about the benefits of civic participation, respondents reported: greater independence (66.3%), fighting for justice regarding the enforced disappearance (38%), and subsistence (35%). Only 8% of 462 respondents reported any “restrictions” to taking part in organization meetings. About 60% stated that they had no affiliation with any political party. A quarter of respondents said they were affiliated with Maoist parties. Less than 3% identified with other parties and 1 in 10 preferred not to answer this question.

Economic Impact of Enforced Disappearance

For just over 73% of the wives, their husband had been the sole breadwinner before his disappearance.²⁰ Over 70% of the respondents viewed themselves as the main “breadwinner” for their family after the disappearance, with the majority having one to three children. While there are variations by district, daily responsibilities in the home currently include: caring for children (60.4%), caring for elderly relatives (24.7%), working in the kitchen (92%), laboring in the fields (54.3%), tending cattle (63.9%), and gathering water and fuel (60–70%).

All 462 survey participants were asked to compare the period before and after the disappearance with regard to whether the family had “enough food.” Slightly over one quarter of respondents recall not having “enough food” prior to the disappearance. This proportion increases to 70% after the disappearance. Nationally, approximately 8% of Nepalis report not having enough to eat one or more times during the previous month.²¹ The responses to other survey questions affirm a shift towards situations of chronic need.

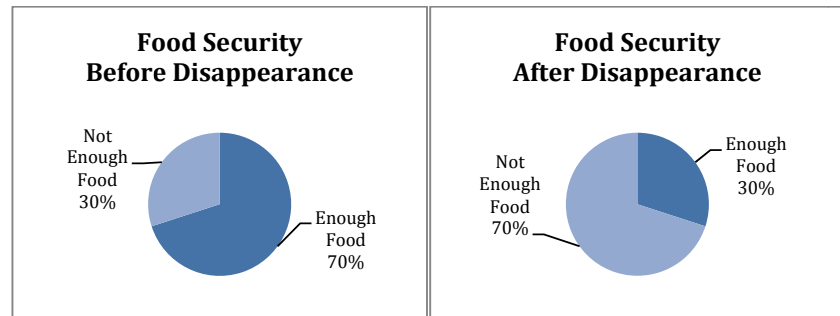
¹⁷ During the early years of the conflict public security committees were formed as anti-Maoist vigilantes in some districts with the tacit approval of government. These committees were responsible for appointing guards who were meant to alert the nearest police station in the event of an activity by a member of the CPN (Maoist). These early efforts to promote the use of untrained civilian to serve as proxy forces against the CPN (Maoist) foreshadowed what became known later in the conflict as “Pratihar Samiti” or retaliation or defense committees, which in some districts, including Kapilvastu, were reportedly trained and armed by state security forces. See, OHCHR, “Nepal Conflict Report” (2012), 41.

¹⁸ Dalits, at the bottom of Nepali caste hierarchy, refers to all occupational caste groups considered “impure” and “untouchable.” The Brahman (priests) and Chhetri (rulers or warriors) are at the top of the hierarchy. Janajati refers to indigenous groups. See DIFID and World Bank, “Unequal Citizens. Gender, Caste and Ethnic Exclusion in Nepal” (2006), 3-6, http://siteresources.worldbank.org/EXTSOCIALDEV/Resources/3177394-1168615404141/NepalGSEA_SummaryReport-part1.pdf

¹⁹ Saving groups exist in most communities, in some cases initiated by the community itself and in others by nongovernmental organizations or government entities, like the Women and Children Development Offices. Such groups are designed to encourage regular saving and provide loans to members.

²⁰ This national average accurately reflects the experience in Bardiya and Rolpa, with higher figures in other districts.

²¹ Government of Nepal, Central Bureau of Statistics, “Nepal Living Standards Survey 2010/11 Vol II” (November 2011), 3, http://cbs.gov.np/wp-content/uploads/2012/02/Statistical_Report_Vol2.pdf



Agriculture was the principal source of livelihood for most survey participants. Prior to the disappearance, 37% of respondents were involved in income-generating activity, combining agriculture (66.9%) and wage labor (45%). In contrast, after the disappearance, 64% reported some kind of income-generating activity, mainly in agriculture (55.4%) and wage labor (31.6%).²² Almost one-third of these individuals reported earning less than 1,000 NRs per month (approximately USD \$11). Only half reported earning more than 3,000 NRs (approximately USD \$33) per month.²³ With such low earnings, indebtedness is a reality for many of these women.

When my husband was disappeared, our land and house were mortgaged to the bank. After he disappeared, I could not keep up with the payments. The bank published a notice. I had to take another loan from relatives to avoid losing everything. The bank then refused to give me another loan payment. There should be a way to help wives in my situation.

- Interviewed Wife, Kavre District, December 31, 2012

Before the disappearance, 56% of respondents were living with the husband's joint family (including parents-in-law, sometimes male in-laws and their families, and unmarried sisters-in-law). The other 44% were living separately (meaning, using a separate kitchen).²⁴ After the disappearance, residence with the husband's family drops from 56% to 21.2%, while the number of women living as a "single family" rises from 44% to 65.2%. The social dynamics related with these changes are explored in the next section. On average, half of the respondents reported ownership of their current home, while about 40% reported that the residence was owned by others (usually relatives or friends). A smaller percentage of respondents were renting their lodgings.

Access or Title to Land

My husband was the only child in his family. His lands were registered in his father's name. Now they [father and mother-in-law] have both passed away. The VDC [Village Development Committee] Secretary told me I need a death certificate for my husband. Otherwise, the land revenue office would not transfer the land to me. Without the land, I can't get credit from the bank to keep running my husband's shop.

- Interviewed Wife, Banke District, December 4, 2012

Land use and ownership, which has a significant impact on livelihoods, was measured in the survey. The proportion of women with control over land holdings in Nepal is low and, where they do own land, the size of the holdings tends to be smaller than that held

²² In Bardiya, 83.2% of 131 respondents reported income generating, the great majority in agriculture (78.9%). The comparative figures for Rolpa are 24.7% and 55%. This means that 75.3% of wives in Rolpa reported no income-generating activity. The comparative figures for Kathmandu are 70% and 9.5%, with most income earners reporting employment in Kathmandu's service sector (61.9%).

²³ The national poverty line for Nepal is USD \$230 a year. See UN Development Assistance Framework (UNDAF) for Nepal, 2013–2017, http://un.org.np/sites/default/files/UNDAF_2013-2017.pdf

²⁴ Use of a kitchen represents a tacit partition of property, although it may not be registered formally.

by men.²⁵ In addition to providing a source of income and food security, land ownership is required as collateral for loans, which are often needed by wives of the disappeared to adjust to new economic hardships.

Under Nepali inheritance law, on the death of a husband/father, a surviving widow and any children have a right to all of the deceased's property, including land. By law, property can also be partitioned among a husband, wife, and children during the lifetime of the husband/father, although in practice this is not as common. In the case of the wives of the disappeared, without proof of their husband's death and in the continued absence of the husband, land and other property cannot be officially transferred. The exception to this is by the so-called 12-year rule, whereby someone who has been continuously missing for 12 years can be presumed to be dead.²⁶ However, this provision is problematic in relation to enforced disappearances, as a presumption of death is unacceptable to many wives until the fate of their husband is determined.

Survey data confirmed that women's lack of formal title to land to which they are legally entitled undermines their economic and social security. Of the women surveyed, 85% (394 out of 462) had a reasonable expectation of receiving a portion of their husband's land under inheritance laws. However, in total, just 57 respondents reported that they held land title (which had been most often acquired before the disappearance had occurred). This represents only 14.5% of the 394 respondents with some entitlement to land.

Further complicating land inheritance is whether land had already been passed on in full, or partitioned among co-inheritors, from father to son prior to the son's disappearance. This was the case for just over one quarter of the 394 respondents who had an expectation of land inheritance. In some of these cases, land titles included the name of the wife of the disappeared. In a few exceptional cases, the father-in-law had transferred his son's portion of ancestral land to the wife after the disappearance. However, for the majority of the wives of the disappeared, accessing the land to which they were entitled would require them to claim it from their father-in-law, adding another layer of procedure, and in some cases tension, with their husband's family.

When my husband was disappeared, my children were quite young. I always thought if I had my husband's property I would find a way to improve my children's life. But my brothers-in-law were not supportive. Through my own struggle, I managed to transfer my husband's share into my name. I feel more confident now. I can invest anywhere I want to. Those who were not ready to help me in the past are close to me these days. It makes me think how the wives of the disappeared have suffered due to lack of property. There should be an easy mechanism for the kind of problem that I faced.

- Interviewed Wife, Nawalparasi District, December 2012

Social Impact of Enforced Disappearance

Traditional cultural practices profoundly shape the experience of wives of the disappeared. Negative aspects of these traditions include dowry (which is seen as a daughter's inheritance from her family and hence her property; however, in some regions, mainly the Terai, a wife is expected to surrender control of these resources to her in-laws), polygamy (explicit or tacit acceptance of multiple wives), and levirate (the practice of maintaining wealth within the male family line by encouraging a brother of the deceased to marry his widow). Research in South Asia demonstrates that such practices are disempowering for women

²⁵ According to figures from a 2001 government survey quoted in Jaganath Adhikari for Action Aid, "Land Reform in Nepal: Problems and Prospects" (2008), women in Nepal control just 8% of land holdings.

²⁶ Evidence Act 2031 (1974), Section 32, "Burden of proving that a person is Alive: Provided that, when the question is whether a person is alive or dead, it is proved that such person has not been heard of for a period of twelve years by those who would naturally have heard of him/her if he/she had been alive, the burden of proving that he/she is alive is shifted to the person who affirms it."

and limit their autonomous ownership of land and property.²⁷ Research also confirms similar tendencies in relation to the wives of the disappeared.

The wives of the disappeared are sometimes described in public discourse as “half widows.” The position of a widow in traditional Hindu culture is already extraordinarily disadvantaged. The wife of a disappeared husband is often treated as neither fully a widow nor a wife, suffering double discrimination for this situation of social limbo.

Survey data reveal a number of related patterns that many wives of the disappeared experience: shifts in residence from joint to single households; the assumption of the role of the sole breadwinner; cultural pressure to behave as a widow and to carry out funeral rituals; and the pressure to remarry or, conversely, fears on the part of in-laws about the consequences of her remarriage for the joint family. Related to the cumulative impact of all of these patterns and the disappearance, itself, ongoing psychological suffering is reported by almost three-quarters (72.5%) of respondents. In Banke, Baglung, Kaski, and Tanahu districts, 100% of the wives reported continued negative psychological impacts resulting from the disappearance of their husband.

The Family

In general the survey findings indicate that family members and in-laws do not pressure a wife to accept or declare her husband deceased. Their interests are united in the hope that the disappeared loved one maybe alive. Indeed, enforced disappearance also has a profound effect on other members of the family, as mothers, fathers, and other relatives of the disappeared are actively engaged in efforts to clarify the fate or whereabouts of the missing.

However, from the perspective of in-laws, particularly those without other male children who are struggling under difficult economic conditions, a daughter-in-law can be viewed as a burden. If there is mistrust within the joint family, the wife of the disappeared may additionally be viewed as a threat to family property. In these cases, ICTJ research suggests that fathers-in-law hesitate to pass on the title of ancestral land to their daughter-in-law for fear that she will take the property away if she remarries.

When my husband disappeared, we didn't yet have any children. Now my in-laws tell me I am just “one life and one body.” No one can take care of me except me. They say I can go and live anywhere. They want to exclude me from the property.

- Interviewed Wife, Bardiya District, December 17, 2012

Resistance by some in-laws to facilitating their daughter-in-law's access to citizenship is another dimension of the problem faced in establishing autonomy and accessing rights. Eligibility for citizenship is based on either descent (one parent is required to have been a Nepali citizen) or birth (if a child was born before April 13, 1990).²⁸ However, for married women, concerned authorities have in practice denied citizenship certificates based on descent and required the citizenship card of the husband. Although most of the women interviewed were already citizens, a few of those who were not had encountered difficulty in obtaining citizenship because of the lack of cooperation of their in-laws in providing her husband's citizenship documents. In Kavre, for example, a woman described being berated by in-laws for wishing to acquire citizenship, as they suspected her of wanting to remove property from the family. In several cases, police were brought in to force cooperation from in-laws.

²⁷ See, for example, Rural Development Institute, “Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka” (December 2009), 15–18, www.landesa.org/wp-content/uploads/2011/01/RDI_Report_WJF_Womens_Inheritance_Six_South_Asian_Countries_December_2009.pdf

²⁸ Citizenship Act, 2006, and Citizenship Regulation, 2006.

“The wives of the disappeared also bear social and cultural pressures from the broader community. This can include pressure on the entire joint family, including the daughter-in-law, to declare the victim of disappearance as deceased.”

A further form of abuse is the accusation that the wife’s “bad karma” (a Hindu belief in a negative cycle of cause-and-effect brought on by one’s actions) has contributed to the family’s misfortune and that the wife may even be responsible for the disappearance. In Kailali, Kanchanpur, Surkhet, and Siraha, women reported situations in which they were accused by in-laws of being responsible for the death of their husband. In some extreme cases, the wife of a disappeared husband may be vulnerable to accusations of witchcraft. This accusation usually attributes responsibility for misfortune to women perceived to be living outside of social norms.²⁹ One woman in Baglung explained that she was facing witchcraft accusations from her sisters-in-law, who blamed her for her buffalos’ low milk production.

The findings show that in some cases the wife has come to view herself as a burden to her in-laws, particularly if she has no children or only daughters. Comments about bad karma from neighbors or in-laws caused some wives to wonder whether they may be to blame for the disappearance. Others described being worried that, without their husband, they may be unable to arrange a sufficient dowry for their daughter(s).

These social, cultural, and legal factors provide an important context for examining the survey’s quantitative findings. As noted earlier, 44% (201 out of 462) of wives of the disappeared were living outside of the joint family before the disappearance. This number increases dramatically after the disappearance, with 65% living in a separate or same dwelling (with separate kitchen); 8% living with their own parents, and just over 5% living with other relatives. Particularly in Banke, Bardiya, Kathmandu, and Kavre, women explained that they were living with their own parents or friends due to social pressure (largely related to their relationship with in-laws) or economic hardship.

The Community

The wives of the disappeared also bear social and cultural pressures from the broader community. This can include pressure on the entire joint family, including the daughter-in-law, to declare the victim of disappearance as deceased. In Hindu culture, a wife may feel pressure in this scenario to exchange her red sari (traditional attire for married women) for the white robes of widowhood. In Kailali, for example, a local police official criticized a woman for seeking to register her husband as disappeared while still wearing the red sari of marriage.

The implication of these local interactions is that enforced disappearance is equivalent to death, which differs from the way in which Hindu culture views the missing more generally. In normal cases of absence without explanation, the wife is generally under no pressure to perform funeral rites. Conflict-era disappearances are not perceived in the same way; rather, the missing are often assumed to be dead. With this collective understanding, the wife of a disappeared husband may be told by neighbors, for example, that her refusal to carry out funeral rituals puts the social order at risk or that her dead husband’s spiritual liberation is at stake. She may be excluded from public rituals due to her social status, which is perceived as impure.

The research data suggest that many women, as many as one in five, have declared their disappeared husbands deceased. As noted in the next section, this relates to both community understandings and early iterations of the government’s IRP policy, by which families of the deceased were entitled to significantly higher levels of compensation than families of the disappeared.

The wives of the disappeared also face other pressures and challenges at the community level. For example, in some contexts a woman in the absence of her husband is called on

²⁹ Belief in witchcraft continues among some communities in Nepal with those accused held responsible for bringing ill health or even killing people and livestock. Those accused are always women, typically widows and the elderly with low economic status, particularly Dalits or those belonging to other marginalized groups. For further information, see Asian Human Rights Commission, “Nepal: Witchcraft as a Superstition and a Form of Violence Against Women in Nepal” (2011), www.humanrights.asia/opinions/columns/AHRC-ETC-056-2011

“The government of Nepal has yet to act on its commitments and obligations to investigate the fate and whereabouts of the disappeared.”

to fulfill her husband’s communal responsibilities. One woman from Bardiya explained that she was required to undertake road building and the night-time duty of guarding against elephant attacks with local men, though her child-care responsibilities made this difficult, she lacked the money to pay the fine for not participating.

If the wife of a disappeared husband is still relatively young, remarriage may emerge as an option. In some districts, this may be viewed negatively by the community as a betrayal of the missing husband. In other districts and local cultures, remarriage is viewed more positively (particularly in Bardiya and in Rolpa). In these contexts, if a woman does not remarry, she may be viewed negatively as lacking an accepted social identity: being neither a widow nor a divorced woman or a single woman. The survey data suggest that a quarter of the women who remarried had experienced pressure to do so.

Among those who had not remarried some reported unwelcome attention and sexual harassment by men in the community. There are also accounts in some districts of harassment of wives of the disappeared by public officials, in some cases during the course of their seeking relief through the IRP.

The Government’s Legal Obligations and Responses to Enforced Disappearances

International Obligations

A number of international instruments place legal obligations on states to take effective legislative, administrative, judicial, and/or other measures to prevent or repress the commission of enforced disappearance in any territory under its jurisdiction. These instruments include the International Convention for the Protection of all Persons from Enforced Disappearance (hereinafter the Convention), which was adopted by the UN General Assembly on December 20, 2006, and entered into force on December 23, 2010.³⁰ To date, 92 states have become signatories; Nepal is not among them.

In addition to making enforced disappearance a crime under international law, the Convention obliges states to implement the standards into national law and guarantees the rights of victims or their relatives to have access to justice and full and effective reparation. The crime of enforced disappearances was also prohibited prior to 2010 by the 1992 UN Declaration on the Protection of all Persons from Enforced Disappearance.³¹ While Nepal has not ratified the Convention, both instruments were adopted by UN General Assembly resolutions and reflect the consensus of the international community against this type of human rights violation, providing authoritative guidance on measures to be implemented in order to prevent its occurrence.

On February 14, 2013, the UN Working Group on Enforced or Involuntary Disappearances³² issued a general comment on women affected by enforced disappearances.³³ The general comment provides that states must take measures to remove obstacles including institutional barriers that prevent women victims of enforced disappearances from enjoying their human rights fully and equally and on the same basis as men.³⁴ The

³⁰ UN General Assembly Resolution, A/RES/61/177, January 12, 2007.

³¹ See also the 1996 Inter-American Convention on Forced Disappearance of Persons Rights and customary international humanitarian law.

³² The Working Group receives and examines reports of disappearances submitted by relatives of disappeared persons or human rights organizations acting on their behalf. After determining whether those reports comply with a number of criteria, the Working Group transmits individual cases to the governments concerned, requesting them to carry out investigations and to inform the Working Group of the results. With the adoption by the General Assembly of the Declaration on the Protection of all Persons from Enforced Disappearances, starting as at 1992 and in addition to its core mandate, the Working Group was also entrusted with monitoring the progress of states in fulfilling their obligations deriving from the Declaration providing governments with assistance in its implementation.

³³ Working Group on Enforced or Involuntary Disappearances, General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eight session (October 31- November 9, 2012), UN Doc. A/HRC/WGEID/98/2, February 14, 2013.

³⁴ Id. para 15.

comment also calls for women's participation and full representation in all aspects related to enforced disappearance, including the design and delivery of a truth-seeking process.³⁵ It acknowledges the importance of reparations to women victims, recognizing that a gender responsive reparations program should not only return individual victims to the status quo ante, but should also address pre-existing gender discrimination.³⁶

National Obligations

The 2006 Comprehensive Peace Agreement committed the main parties to the conflict to the identification of the disappeared,³⁷ the formation of a National Peace and Rehabilitation Commission to assist in "normalizing" the situation and provide "relief and rehabilitation" for victims,³⁸ and the establishment of a High-Level Truth and Reconciliation Commission to investigate gross human rights violations and promote reconciliation.³⁹ Nepal's Interim Constitution (January 2007) reiterates these commitments.⁴⁰

On June 1, 2007, the Nepal Supreme Court issued a ruling in a high-profile habeas corpus petition related to enforced disappearances in which it directed the government to "urgently enact a law which includes provisions that the act of disappearance is a criminal offence" and provide for "a separate commission of inquiry with respect to such disappeared persons."⁴¹

In the same decision, the Supreme Court ordered immediate relief for the victims. In its judgment it made the point that: "immediate relief, even if it is partial, should be provided in order to save them from abandoning the tiring path of justice owing to frustration, to provide support and cooperation in adopting the legitimate path of searching for their loved ones."

Importantly, the court clarified that relief would "not affect the amount and nature of the remedy to be provided as per the law;" emphasized that "rights would be meaningless in the absence of effective remedies;" and noted "the need to respect the rights of victims' families to seek remedies."⁴² According to international law and standards, remedy involves the investigation of the alleged violation, action against perpetrators, and if applicable, reparations to victims of human rights violations arising from state actions and omissions.⁴³

Still, the government of Nepal has yet to act on its commitments and obligations to investigate the fate and whereabouts of the disappeared. Draft legislation aimed at criminalizing enforced disappearances and the establishment of a Commission of Inquiry

³⁵ Id. paras 22–25 and 33.

³⁶ Id. para 39.

³⁷ CPA Section 5.2.3, "Both sides agree to make public within 60 days of the signing of the agreement the correct and full names and addresses of the people who 'disappeared' or were killed during the conflict and convey such details to the family members."

³⁸ CPA section 5.2.4, "Both sides agree to constitute a National Peace and Rehabilitation Commission and carry out works through it for the normalization of the difficult situation that arose as a result of the armed conflict, maintain peace in the society and run relief and rehabilitation activities for the victims of conflict and those displaced."

³⁹ CPA Section 5.2.5, "Both sides agree to set up with mutual consent a High-level Truth and Reconciliation Commission in order to probe into those involved in serious violation of human rights and crime against humanity in course of the armed conflict for creating an atmosphere for reconciliation in the society."

⁴⁰ Interim Constitution, Part IV, Article 33, Obligations of State: providing for "relief, recognition and rehabilitation" for families of those killed and for the disabled (33(p)), "relief" to families of victims of disappearance on the basis of the "Investigation Commission" findings (33(q)), rehabilitation programs for those displaced and compensate for damaged private and public property (33(r)), and the establishment of "a high-level Truth and Reconciliation Commission to investigate the facts about those persons involved in serious violations of human rights and crimes against humanity committed during the course of conflict, and to create an atmosphere of reconciliation in the society." (33 (s)).

⁴¹ Supreme Court of Nepal, Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v Government of Nepal, Ministry of Home Affairs and others, habeas corpus writs: 3575, 100, and other petitions, June 1, 2007. Supreme Court Bulletin, Special Issue 80 (June 2007).

⁴² Id.

⁴³ UN Basic principles and guidelines on the right to a remedy and preparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, UN Doc. E/CN.4/RES/2005/35, April 19, 2005.

“In order to access the Interim Relief Program, the wives of the disappeared are forced into public roles from which they are normally excluded. They must interact with male nonfamily members in public, which is regarded as socially unacceptable in many communities.”

on Disappearances (CoID) was abandoned in May 2012 and subsequently replaced by an ordinance to establish an Investigation of Disappeared Persons, Truth and Reconciliation Commission. The ordinance, which was signed into law on March 14, 2013, combined the previous CoID bill with a separate bill on the establishment of a Truth and Reconciliation Commission.⁴⁴ The ordinance was subsequently challenged in the Supreme Court, including on grounds that it was not compliant with international law and standards. At the time of writing the decision on the case was pending.

The Interim Relief Program

In contrast to the state's lack of progress on fulfilling its commitments to further investigate and reveal information about the fate and whereabouts of the disappeared, the government was quick to establish a relief program for conflict-affected persons, including families of the disappeared.

The Interim Relief and Rehabilitation Program (IRP) was established in 2007 and provides various benefits to conflict-affected persons, including economic assistance, scholarships for up to three children, skills- training, and immediate (not long-term rehabilitative) medical care. The categories of beneficiaries include: next-of-kin of the deceased or disappeared; survivors of abduction, disability, or injury; and those whose property was lost or destroyed.⁴⁵ Victims of sexual violence were entirely excluded and victims of torture are only eligible under provisions relating to medical care, an unjustifiable and troubling policy that is the subject of other reports.⁴⁶ Psychosocial support was not initially offered, but a program is now in the planning phase.

As of April 2013, 1,517 victims (potential beneficiaries) had been identified under the category of “disappeared persons” and benefits distributed to 1,501 (98%).⁴⁷ In relation to experiences in other countries, this was a prompt, albeit limited, response to the situation faced by conflict victims in general. In the ICTJ study, most respondents as of January 2013 reported full or partial receipt of benefits under two categories of IRP, either in the category of enforced disappearance or death.

Impact and Challenges of the IRP for Wives of the Disappeared

Most of the respondents in ICTJ's research perceived a positive impact from the IRP. Women recipients reported that they had deposited the funds (37%), paid debts (21.1%), purchased property (15.4%), spent on household consumption (14.2%), or invested in income-generating projects (10.5%). However, the research revealed problems related to both policy and implementation that affected wives of the disappeared in specific ways.

The initial policy, in which next-of-kin benefits specific to disappearances was less than that provided to next-of-kin of the deceased (25,000 NRs compared to 100,000 NRs), resulted in a serious dilemma for many women.⁴⁸ The survey results showed that at least one-fifth of 408 respondents had opted to declare their disappeared husbands as deceased, though not all the women chose to answer the question. The factors involved in this momentous decision relate to the social and economic pressures explained above, but for some the decision was made out of economic necessity because of how the IRP policy was originally formulated. A cabinet decision in January 2009 equalized next-of-kin benefits for

⁴⁴ Eduardo González, ICTJ, “Seeking Options for the Right to Truth in Nepal,” 2012, www.ictj.org/publication/seeking-options-right-truth-nepal

⁴⁵ The most recent amendment to the IRP includes victims of the People's Movement and Madhesh/Terai Movement and provides medical care coverage for “distinguished persons” (up to 1.5 million NRs) and marginalized people (up to 100,000 NRs).

⁴⁶ See for example, ICTJ, “From Relief to Reparations: Listening to the Voices of Victims” (2011) and Ruben Carranza, ICTJ, “Relief, Reparations, and the Root Causes of Conflict in Nepal” (October 2012).

⁴⁷ Information provided to ICTJ by RRU, July 2013.

⁴⁸ The relief provisions were for “next of kin” of the deceased or disappeared. When the relief program first started in 2007 “next of kin” of a deceased person received NPR 100,000 and “next of kin” of a disappeared person received NPR 25,000. MoPR, “Standards related to economic support and relief to conflict victims” (2007).

wives of the disappeared (to NRs 100,000), but by then a significant number of victims of enforced disappearance had been declared dead. The amount has been increased several times for both categories (next-of-kin of the deceased and the disappeared) first to NRs 300,000 and later to NRs 1,000,000, to be provided in a combination of cash and shares, although these benefits have yet to be fully distributed.

Initially, under October 2009 procedures, wives of the disappeared were also excluded from the NRs 25,000 lump sum benefit provided to widows (distinct from “next-of-kin” benefits), again without a clear articulation of any principle underlying this policy distinction. In September 2011, the cabinet equalized this benefit for wives of the disappeared.⁴⁹ Similarly, scholarships for children of the wives of the disappeared were not provided on an equal basis with the deceased until December 2009.

The process of applying for and receiving benefits under the IRP also created challenges for the women. The ICTJ research found that the burden most frequently cited by wives of the disappeared was the evidentiary burden of proving the disappearance (74%) followed by the cost of the process (64.7%), the lack of cooperation from public officials (45.3%), the dysfunction within Local Peace Committees (22.5%), and the inability to obtain a recommendation from a political party (17.4%), which, although not an official requirement, assisted in the successful lodging of applications.

In order to access the program (or indeed to carry out other administrative tasks), the wives of the disappeared are forced into public roles from which they are normally excluded. They must interact with male nonfamily members in public, which is regarded as socially unacceptable in many communities. Over one-third of respondents reported some form of discrimination during the process of seeking IRP benefits, which most respondents attributed to gender bias, while a smaller number considered the cause to be economic, political, or ethnic bias.

In practice, many of the wives of the disappeared relied on the assistance of both male family members and other people outside their family, usually men, in order to access benefits. In some traditional contexts, movement beyond the home into public spaces and gatherings is only possible when accompanied by male family members, such as a husband, brother, or elder son. This protects a woman from social abuse, but at the same time prevents her from exercising autonomy over her life.

The ICRC and many locally based civil society organizations offer crucial assistance to families of the disappeared, including the wives of victims. In spite of these forms of assistance and accompaniment, ICTJ research revealed cases of discrimination and abuse both by public officials and private individuals. While such anecdotal accounts seem not to be representative of the experience of the majority of respondents, their seriousness merits consideration.

One man offered to help me. He has political influence. He took me to different places to find my husband. Then he started asking me to come and meet him in hotels at night.

- Interviewed Wife, Bardiya District, December 16, 2012

Some people helped me to seek justice and make an IRP claim. Then they tried to take advantage of me.

- Interviewed Wife, Baglung District, December 21, 2012

Respondents also described problems relating to the accessibility and integrity of the administrative process. Access to IRP benefits for many women involved a significant social and economic burden. A minimum of seven administrative steps was required for

⁴⁹ The same amendment increased the next-of-kin benefit to NRs 300,000.

“A full independent evaluation of the IRP would assist in establishing its impact and identifying the gaps as well as lessons learned regarding its administration, which could then inform the design of a future reparations program.”

a successful claim,⁵⁰ assuming that an application was not sent back to correct errors or provide further information. During this time-consuming process, most victims visited the office of the Chief District Officer (CDO) repeatedly to inquire about their claims. In undertaking these journeys, a third of the respondents reported a lack of family support, while almost 10% were dealing with direct disputes with next-of-kin related to IRP claims. Many women have no access to even small amounts of surplus cash in their day-to-day lives, meaning that a trip to the district headquarters (often a journey of several hours to several days) can be a major undertaking. Many beneficiaries only succeed after having their claim rejected several times.

I am displaced and living in Kathmandu. I can only get the government relief by going back to my district. Going back would be too expensive. It doesn't make sense.

- Interviewed Wife, Kathmandu District, December 2012

I have travelled many times to the authorities to receive relief. It is costly. They always send me back with empty hands for this reason or that. I don't have the money to continue this process.

- Interviewed Wife, Kailali District, December 18, 2012

Like other IRP beneficiaries, some wives of the disappeared encountered difficulties arising from the influence of political parties on decisions about eligibility and distribution of funds and from the lack of coordination among the various authorities involved in the process. Some respondents shared experiences of harassment by public officials during the process of claiming IRP benefits, although the study did not establish this as a pattern.

I didn't know anybody with political influence. That made it difficult to get anywhere.

- Interviewed Wife, Kailali District, December 18, 2012

There were different forms and procedures. I was not aware. It was difficult for me. Others had political friends. It went much faster for them.

- Interviewed Wife, Surkhet District, December 2, 2012

Participants in the study also complained about difficulties arising from a clash between the official relief policy and local culture. In particular, some described experiences where local authorities responded to family disputes over benefits by issuing joint checks. For example, under the relief policy a wife is entitled to the entire benefit, yet in some cases the CDO (the official body responsible for distributing relief funds) was reported to have included in-laws or children in these payments. In other cases wives were compelled by tradition to share the benefit among family members. The solution to such issues is not clear, as there are strong cultural norms that resist the receipt of the benefit by only one next-of-kin when the family network is presumed to jointly share economic burdens. On the other hand, there are clear cases of this practice undermining the wife's autonomy while not relieving her of the burden she carries in her new role as the sole breadwinner.

Conclusions and Recommendations

Enforced disappearance brings specific kinds of harms to the wives of the disappeared

⁵⁰ The seven steps involved in an IRP application for the families of disappeared are: 1) filing an application with the Chief District Officer (CDO); 2) submission of the application by the CDO to the Data Collection Task Force of the MoPR; 3) review and submission of the application by the Task Force to the MoPR to recommend that relief is given (copying the RRU); 4) submission of the recommendation by the RRU to the CDO for re-verification; 5) return of verified names of disappeared person and his family by the CDO to RRU; 6) authorization by the RRU to release relief to the CDO; 7) request for fund release by the CDO to the Financial and Treasury Controller Office (part of the Ministry of Finance).

and their families. These specific harms require corresponding specific responses. While the government's IRP has been an important and useful step toward responding to the immediate needs of the disappeared person's wife and family, the benefits under it and the manner by which they are accessed have fallen short of providing reparative justice to victims.

Payment of compensation to the families of the disappeared, including a separate additional sum to the wife, and scholarships for up to three children of the disappeared help respond to these women's immediate financial needs, but payments are short-term measures that do not address long-term or permanent harms and do not include any explicit acknowledgment of responsibility or wrongdoing.

The WGEID has noted that one of the constitutive elements, or harms, of enforced disappearances is that the victim is placed "outside the protection of the law." The implications of this are that not only is detention denied and/or the fate or whereabouts of the person concealed, "but while deprived of his/her liberty, this person is denied any right under the law, and is placed in legal limbo, in a situation of total defenselessness." This legal limbo also entails violations of the rights of other persons, including next-of-kin, which prevent them from exercising their rights and obligations with legal consequences to, for example, the status of marriage, guardianship of children, and the right to social allowances and management of property of the disappeared person.⁵¹

Responding to these harms requires targeted measures, ideally as part of a comprehensive reparations program. A full independent evaluation of the IRP would assist in establishing its impact and identifying the gaps as well as lessons learned regarding its administration, which could then inform the design of a future reparations program, such as that envisaged in the ordinance on the establishment of the Investigation of Disappeared Persons, Truth and Reconciliation Commission. In designing such a program, the government should consider forms of reparations that specifically target as beneficiaries the wives of the disappeared, who have certain needs that other victims' categories do not. These include the need to: know the fate of their husband or family member and if he is deceased, know the whereabouts of remains so that burial rites can be performed, be supported in efforts to seek information about and justice for the disappearance and other violations of human rights arising from it, and have long-term economic security for themselves and their children.

Pending the establishment of such a program, there are other immediate measures that can be taken to alleviate some of the most pressing socioeconomic problems identified in the research. In accordance with international norms, such measures, of course, do not replace or in any way undermine the right to truth and justice.⁵² In this regard, Nepal should immediately act to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, criminalize enforced disappearance and to clarify the fate and whereabouts of the disappeared by establishing a specialized institution or search group led by forensic experts that could compile pre-mortem information from families, identify and protect sites of interment, and conduct exhumations as a permanent policy of state.

1. Ensure recognition before the law of victims of enforced disappearance

Nepal should consider adopting legislation to protect and respond to the rights and interests of the disappeared and their next-of-kin. Legislation should be developed in careful consultation with families of the disappeared, legal experts and other key stakeholders. Consultations should take into account the ICRC's 2009 model law guidelines aimed at

⁵¹ See Human Rights Council, 19th Session, General comment on the right to recognition as a person before the law in the context of enforced disappearances, UN Doc. A/HRC/19/58/Rev.1, March 2012, Paragraph 42.

⁵² See UN Commission on Human Rights, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, February 8, 2005.

implementing this kind of remedial policy option.⁵³

The ICTJ research findings illustrate the causal link between the uncertain legal status of victims of enforced disappearance and the burdens experienced by wives and other family members, as recognized by WGEID.

In response to the right of the disappeared to be recognized as a person before the law and the obligation to respect the rights of next-of-kin, WGEID recommends acknowledgement in the form of a “declaration of absence by reason of enforced disappearance” to be issued, with the consent of the family, by a state authority after a certain time has elapsed since the disappearance.⁵⁴ The Human Rights Council has likewise called on states, as part of a range of measures to prevent and address cases of enforced disappearances, to take steps to address the legal uncertainty created by the absence of the disappeared person, including by issuing a “declaration of absence” as a result of enforced disappearance.⁵⁵

Countries including Argentina, Chile, Colombia, and Peru have legislated for such a “declaration of absence.” While each drafted law responds to the specific national context, their objective has been similar in providing a legal status to the disappeared, and allowing the next-of-kin of the disappeared person to exercise and protect their rights and interests, including the management of the disappeared person's properties, until such time that their fate and whereabouts are resolved. In the case of Bosnia, legislation was adopted that provides for the registration of victims of disappearance, the provision of assistance to their families, and an accessible procedure to declare the death of victims. The different approaches reflect the different desires of relatives in the various contexts: in the case of Argentina, Chile, Colombia, and Peru, a special status for the disappeared in order that they were not compelled to declare their relatives dead without knowing their fate; and in the case of Bosnia, to facilitate the process of official declaration of the death.

2. Prioritize access to land title by wives of the disappeared

The government should provide remedial measures to secure the established legal interests of the wife or relatives of the disappeared in ancestral property without requiring them to declare the disappeared person deceased. These measures should protect the rights of the wives of disappeared by addressing land and property inheritance, and partition issues that would arise if the person were deceased, but without requiring a declaration of death.

The ICTJ research found that more than 86% of respondents did not have title to land that would otherwise automatically pass to them, and their children, in the event of the death of their husband. Land title security is a key factor in reducing women's social and economic vulnerability, because it enables subsistence food production, serves as security against banks loans, and provides social autonomy.

As a result of a 1996 Supreme Court verdict in response to a challenge to amendments of discriminatory laws, the 11th amendment to the Country Code (1963) (Muluki Ain) was enacted in 2002. These and subsequent reforms established formal equality in many areas of land and property inheritance for women.⁵⁶ However, they do not offer a satisfactory solution for wives of the disappeared because of the lack of legal status of their husbands; their only avenue for access to property is provided by the statutory rule under which their husband is

⁵³ ICRC, Guiding Principles / Model Law on the Missing: Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence: Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families, Advisory Service on International Humanitarian Law, February 28, 2009, www.icrc.org/eng/resources/documents/misc/model-law-missing-300908.htm

⁵⁴ Report of the Working Group on Enforced or Involuntary Disappearances, Human Rights Council, 19th Session, (General comment on the right to recognition as a person before the law in the context of enforced disappearances) UN Doc. A/HRC/19/58/Rev.1, March 2012, Paragraph 42, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Rev1_en.pdf

⁵⁵ Human Rights Council Resolution, A/HRC/21/L.5 (passed by unanimous consent), September 21, 2012, para.18(k).

⁵⁶ For example, daughters were recognized as heirs to parental property on an equal standing with sons, widows were able to claim a share of property from joint family estates on the death of her husband, and legal provisions limiting the rights of women to their (living) husband's property were revised. 11th Amendment to the Civil Code (Muluki Ain).

assumed dead if he has been missing for 12 years or more. This route, which would allow wives of the disappeared the opportunity to obtain a death certificate after 12 years and hence to secure the transfer of land, is contrary to the wishes of those who are unwilling, and should not be required, to declare their husbands dead.

3. Expedite the issuance of identity cards for families of the deceased and disappeared

A form of ID that officially recognizes victims of human rights violations and their relatives has the potential, if administered effectively with sensitivity and in consultation with victims, to overcome many of the administrative hurdles experienced by wives of the disappeared, and conflict-affected persons more generally, in accessing benefits under the IRP or any future reparations program. In relation to the wives of the disappeared (and indeed to wives of those killed during the conflict), an ID card could contribute to reducing their vulnerability to discriminatory behavior and provide a level of social recognition that can empower and improve their self-confidence. In particular, the wives of the disappeared ought not to have to repeatedly prove their status in order to access relief or reparations.

In 2012, the Ministry of Peace and Reconstruction made public guidelines for providing identification cards to the families of the deceased and disappeared. According to the guidelines, their objective is to enable access by families of individuals killed or disappeared during the course of political conflict to various services and facilities to be provided by the government,⁵⁷ although it remains unclear precisely what services and facilities the ID cards are intended to provide access to. Distribution of the ID cards is reported to have commenced in mid 2013, although the program is now subject to a legal challenge by representatives of three victim organizations.⁵⁸

Any measure of this kind should give high priority to confidentiality, access to information, and voluntary participation by victims and family members. In order to maximize the impact of this ID card system, the government should also conduct outreach in those districts where the highest concentration of disappearances were reported and consider reopening registration for this category of violations. It is also important that the program is extended to other victims of conflict-related human rights violations, including victims of torture and sexual and gender-based violence, and that they likewise receive recognition and access to support and services.

4. Strengthen ministerial coordination and victim participation

Government measures are required to overcome the identified tensions and failures in ministerial coordination. Information regarding government initiatives aimed at conflict victims, including the remaining components of the IRP (skills training and psychosocial support) must reach the intended beneficiaries through targeted awareness raising among women. Women are particularly disadvantaged to the extent that the decision making in the current administrative process is ad hoc and weakly coordinated, opening the door to gender-based discrimination and other abuses.

ICTJ also reiterates previously made recommendations to ensure victims' participation in any programs that may have implications for them, including information dissemination,

⁵⁷ Guidelines for providing identity cards to the families of the deceased and disappeared in the course of political conflict, 2012. Under the guidelines, those eligible for ID cards will include "nearest kin" of deceased and disappeared during the "armed conflict, historical people's movement, Mahdesh/Terai movement, indigenous movement, Tharuhat movement, Dalit and marginalized class movement or other community based movement," www.peace.gov.np/uploads/files/18_%20Parichaya%20Patra_Nirdesika.pdf

⁵⁸ A petition, filed in the Supreme Court on July 24, 2013, objects to the wording on the ID card, which refers to the 1996-2006 armed conflict as the "People's War"—a term usually associated with the Maoists, which is rejected by victims of Maoist abuses. The petition demands that the wording be changed to victims of the "armed conflict," a term which is generally considered more neutral and is used in other official documents including the Interim Constitution. On August 12, 2013, the Supreme Court issued an interim stay order on implementation of the guidelines, including distribution of the ID cards, until a final decision on the case.

Beyond Relief: Addressing the
Rights and Needs of Nepal's
Wives of the Disappeared

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determining the needs and aspirations of victims, as well as designing and implementing programs.⁵⁹

The relief program and any future reparations program should be viewed as an opportunity to enable and empower women by introducing measures for redress that seek to end preexisting patterns of gender discrimination, systemic marginalization and structural inequalities.⁶⁰ Linkages should be made between the relief scheme and related development initiatives that strengthen the capacities of women to invest and to engage in microenterprises and other livelihood options. A skills training employment opportunities program currently being implemented in 43 districts offers this opportunity. Lessons learned from the piloting of this element of the IRP may be important in comparing individual and collective approaches to addressing the economic and social needs of the wives of the disappeared and other women affected by conflict in a future reparations program.



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ICTJ New York
5 Hanover Square, Floor 24
New York, NY USA 10004

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⁵⁹ See for example, Ruben Carranza, ICTJ, "Relief, Reparations and the Root Causes of Conflict in Nepal" (October 2012).

⁶⁰ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, April 29, 2010, UN Doc. A/HRC/14/22, para 31.