

NEPAL

# “Now Is a Time to Lead”

## Advancing Transitional Justice Initiatives Through Local Governments in Nepal

July 2018



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Justice  
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**Cover Image:** Women conflict victims gather in a circle during a workshop held in Mahendranagar, Kanchanpur District, in April 2018. (ICTJ)

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Elena Naughton and Kelen Meregali

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### About ICTJ

The International Center for Transitional Justice (ICTJ) works across societies and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims’ dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit [www.ictj.org](http://www.ictj.org).

### About JuRI-Nepal

Since its inception in 2011, Justice and Rights Institute Nepal (JuRI-Nepal) has been working for the protection and promotion of human rights and strengthening social justice and rule of law in Nepal, contributing to a just, peaceful, and prosperous society that respects, protects, and upholds human rights, including economic, social, and cultural rights for all, particularly the marginalized and vulnerable segments of the population. For more information, visit [www.jurinepal.org.np](http://www.jurinepal.org.np).

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## ACRONYMS

CIEDP	Commission on Investigation of Enforced Disappearance of Persons
CA	Constituent Assembly
CPA	Comprehensive Peace Accord
CSO	Civil Society Organizations
CVC	Conflict Victims Committee
CVCP	Conflict Victims Common Platform
DCC	District Coordination Committees
ICTJ	International Center for Transitional Justice
IRP	Interim Relief Program
JuRI-Nepal	Justice and Rights Institute Nepal
MoPR	Ministry of Peace and Reconstruction
NHRC	National Human Rights Commission
NPC	National Planning Commission
OHCHR	Office of the High Commissioner for Human Rights
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
VDC	Village Development Committee

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## Executive Summary

Recently, Nepal implemented some significant long-awaited changes to its structure of government that present new opportunities for addressing the justice needs of conflict victims. On September 20, 2015, a new Constitution came into effect, replacing the interim Constitution promulgated in 2007, soon after the conflict ended. That constitution introduced a new federal structure of government that, among other things, vests local governments with 22 powers and areas of responsibility over which they have broad authority. Many of these powers can be exercised to establish policies and programs at the local level for fulfilling victims’ rights to truth, justice, reparation, and acknowledgment for the human rights abuses victims suffered during the war.

Although local initiatives are not a complete substitute for a coherent national policy, these powers offer great potential for implementing measures to address promptly and directly a full spectrum of victims’ reparative needs, from the symbolic to the material. They encompass food, housing, employment and job creation, medical care, education, legal services, help obtaining official documentation, memorialization initiatives and other forms of public recognition, awareness-raising activities, and measures aimed at preventing the recurrence of human rights abuses. Many of these measures would fulfill fundamental rights guaranteed under the Constitution to all Nepal’s citizens, and additional rights secured there for vulnerable populations (such as the elderly, disabled, single women, those marginalized or indigent, and children). If designed to be reparative in nature, they could also fulfill victims’ rights to an effective remedy, including the right to “adequate, effective and prompt reparation,” as articulated by the UN General Assembly in its Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Guidelines).

This report aims to help local governments, victims’ groups, and other stakeholders to understand the scope and potential inherent in these powers and to identify what local governments and others can do to design and implement initiatives that support victims of conflict and that fulfill this potential. To this end, this report looks closely at the provisions of the 2015 Constitution and the Local Government Operationalization Act 2074 BS (2017 AD). It also considers the essential role local governments can play in crafting and coordinating responses alongside national-level institutions that are advancing transitional justice processes, such as the Truth and Reconciliation Commission (TRC), the Commission on Investigation of Enforced Disappearance of Persons (CIEDP), and the National Human Rights Commission (NHRC). Additional consideration is given to the provisions of the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (the TRC Act), 2071 (2014),<sup>1</sup> and the requirements established therein for local government cooperation and engagement with ongoing transitional justice mechanisms.

With offices within or near victim communities, local governments in Nepal are well situated to tailor initiatives to address victims’ particular needs. Coming as they do from out of the communities they serve, most local officials, including many who are victims themselves, are familiar with realities on the ground and nuances in the economy and in community practices that may affect whether a policy will benefit or might unintentionally harm victims, or could even exacerbate tensions within families or between neighbors. Many local officials speak and read the local languages and dialects victims speak and read. Also, many are privy to crucial differences among survivors’ experiences of war, as well as their current life situations. With access to information about existing services and knowledge of what is required to get

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<sup>1</sup> The Parliament of Nepal passed this legislation on April 25, 2014, and it was subsequently published on May 21, 2014.

things done locally, local governments offer real potential advantages for understanding and effectively responding to victims’ needs and for building the kinds of relationships needed to help bridge divides not only between and among victim populations, but also between victims and nonvictim communities in Nepal.

With five-year terms in office (and eligibility for an additional term), local officials at each of the different levels of local government (e.g., municipal, village, and ward) should be able to plan and undertake not only short-term or targeted projects that respond to victims’ urgent

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**“We raise our voices. We do not give up. And we will not sit by in silence...I say to the government—listen to our voices, consider our demands.”**

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needs but also long-term, subsistence-based projects that can provide victims with the benefits they need to create a more stable life for years to come.

Many of these initiatives can begin while national policymakers in Kathmandu continue working on a comprehensive approach to transitional justice. National and local dimensions of transitional justice

are not mutually exclusive; there is no reason local efforts cannot be designed in a way that meet victims’ needs for redress, in particular for the most vulnerable populations, while still meeting other government obligations, including those at the central and provincial levels. In fact, local governments working effectively now might relieve some of the pressures on the central government, by meeting victims most acute needs and collecting data and testing policies that could be implemented later at the national level.

To do so, all levels of government across the federal structure will need to coordinate, communicate, and abide by the essential elements of good governance,<sup>2</sup> including preventing corruption. Victim initiatives must be designed in such a way as to “do no harm” and to ensure that victims are treated fairly and with respect and dignity. As Nepal has learned from its experience implementing the Interim Relief Program (IRP)—which was hampered by significant shortfalls in design and implementation (including insufficient funding, a lack of coordination among key stakeholders, the exclusion of some categories of victims and the unequal treatment of others, and the politicization of application processes and eligibility determinations)<sup>3</sup>—it is essential to consult with victims, to be sensitive to their needs and vulnerabilities, to acknowledge the violations they experienced, and to monitor and evaluate implementation to prevent discrimination.

In all decisions and procedures, the safety, well-being, and dignity of victims must be considered and given priority. The victims will be paying attention. As one victim forcefully made the point, “We raise our voices. We do not give up. And we will not sit by in silence...I say to the government—listen to our voices, consider our demands.”

The challenges local governments will inevitably face are innumerable. At each stage of the process, local governments will confront significant hurdles as they exercise their powers to design, plan, and eventually implement programs benefiting their constituents, including Nepal’s many conflict victims. This report highlights some of these *major challenges* based on feedback obtained during consultations conducted in preparation of this report in some of the districts where conflict victims live. Immediate steps should be taken to monitor, address, and mitigate the following challenges:

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<sup>2</sup> UN General Assembly, Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, November 30, 2012 (A/RES/67/1).

<sup>3</sup> ICTJ, “From Relief to Reparations: Listening to the Voices of Victims” (2011).

- Need for greater clarity on the intersection between local powers and existing transitional justice mechanisms, including the TRC and CIEDP.
- Lack of disaggregated data about individual conflict victims, their needs, socioeconomic status, and representation in state institutions. To address this gap in information, assessments should be conducted of victims’ basic needs to help governments set priorities over the short, medium, and long term.
- Lack of guidance from the central government and insufficient time for internal discussions and for reviewing, voting upon, and implementing policies and laws, including budget proposals and allocations.
- Challenges meeting victims’ high expectations and working with victims from both sides.
- Need for capacity building by stakeholders across sectors so they can better understand their role in addressing victims’ needs and in advancing transitional justice issues.
- Avoiding politicization of local processes to favor one side of the conflict over the other.
- Assessing available capacity for meeting victims’ needs for services, including medical services.
- Establishing effective outreach mechanisms for communicating with victims so they can seek assistance and learn about benefits once available.
- Determining eligibility of victims for benefits in the absence of documentation.
- Ensuring local initiatives are meaningful and have a reparative impact by distinguishing development objectives from reparative impact and by incorporating an unequivocal message that society recognizes that violations occurred and that victims suffered consequences as a result. Otherwise, the underlying reparative intent and message can be lost.
- Ensuring that gender-sensitive approaches are taken to help improve opportunities for women to serve in government and in leadership roles in local organizations.

These challenges are likely to be made somewhat harder and confusing by parallel operations going on at the TRC and the CIEDP, both of which are tasked with fulfilling victims’ rights to truth, justice, reparations, and acknowledgment. At the time of the drafting of this report, the tenures of the TRC and the CIEDP had been extended until February 2019; the commissions had not concluded their operations or issued recommendations on reparations, which could form the basis for a future comprehensive reparations policy; and major amendments to the TRC Act were under consideration, which could provide further clarity about the form reparations will take and what categories of victims will be eligible to participate and how.

Although the commissions and the associated policy debates could eventually affect some policy choices that local governments make, the commissions will ultimately be dissolved, and their recommendations taken up by ministries and agents of the government, including local government officials who are likely to be asked to assist with implementation. In the meantime, local governments continue to operate and can exercise their constitutionally granted powers to advance the rights of their constituents, including victims of conflict. Many local governments are already staffed and operating, with many designing and implementing initiatives that address the needs of victims.

In fact, there is already much underway that is positive. ICTJ and JuRI-Nepal separately conducted a series of meetings and interviews to find out about those initiatives already in process to address victims’ reparative needs in Kathmandu and in conflict-affected districts,

namely Kavre, Bardiya, Banke, Kanchanpur, Kailali, and Chitwan. Those interviews provide some useful insights into the approaches available to local governments for developing (and perhaps piloting) future reparations policies that address victims’ needs. Among the approaches worth noting are the following:

- Including victim-focused programs and activities within municipal policy and action plans;
- Forming municipal-level conflict victim committees composed of victims from both sides of the conflict;
- Raising awareness about victims’ needs, demands, and concerns;
- Making government offices more victim-friendly;
- Undertaking memorialization initiatives with local government funding, including public infrastructure projects that incorporate symbolic reparations (e.g., naming roads after the disappeared);
- Including victims as a priority group in education and health policies under development.

This report concludes by offering detailed recommendations for local governments that are considering measures of reparation for human rights victims and other transitional justice initiatives, including for promoting reconciliation and projects of memory. Recommendations are also offered to the national government and civil society for facilitating these measures and ensuring monitoring and consistency during implementation. These recommendations include the following:

*For local governments*

1. Conduct a comprehensive assessment of conflict victims’ needs, disabilities, and experiences of harm, and create a victims’ registry and database.
2. Develop policies and plans for providing reparations as a right to victims, in consultation with other local governments and officials at the provincial and national levels.
3. Ensure meaningful participation and consultation with conflict victims when developing programs and policies and formulating local laws that have implications for victims.
4. Earmark funds for victim reparation measures, perhaps by creating a separate budget heading for “conflict victims” and allocating monies annually to support initiatives that directly benefit victims and promote a culture of peace, justice, reconciliation, and human rights.
5. Establish reparative measures, in consultation with relevant stakeholders including victims’ groups in their respective jurisdiction, that provide vulnerable victims in urgent need of reparations with immediate assistance and include longer-term and more comprehensive measures. These measures could include the following:
  - a) Promoting cooperatives created and operated by conflict victims
  - b) Mobilizing and developing local cooperatives to benefit conflict victims
  - c) Adopting measures to encourage entrepreneurship, self-employment initiatives, and income-generation activities involving conflict victims
  - d) Establishing microcredit facilities for conflict victims

- e) Implementing measures to facilitate access to education for conflict victims and their children, including scholarships, education, and vocational training opportunities
  - f) Opening, reestablishing, or upgrading schools and health care centers to benefit conflict-affected populations
  - g) Naming schools, roads, and local infrastructure in honor of the victims of human rights violations
  - h) Prioritizing special incentives for victims engaged, or starting projects, in the agriculture and livestock sectors
  - i) Devising and implementing health-related measures for victims, including psychosocial counseling, emotional support, free health checkups and treatments, free or low-cost medications, and nutritional support
  - j) Devising and implementing social protection measures (e.g., care centers and in-home assistance) for those victims who are living in extreme poverty and who are disabled, elderly, or helpless
  - k) Ensuring that government, including at the provincial and national level, develop processes that allow victims to access reparative measures easily and promptly
  - l) Designing and implementing measures to promote a culture of peace, social reconciliation, harmony, and cohesion, including in relation to sports, arts, and literature
6. Ensure that nondiscrimination and no harm principles for victims are fully observed when formulating and implementing local laws, policies, and programs, and delivering services.
  7. Consider creating a special committee or mechanism or entrusting the local judicial committee with the responsibility to look after local issues having direct or indirect implications for human rights, transitional justice, and peace.
  8. Support transitional justice processes, including by sharing information and providing recommendations to the TRC and CIEDP.
  9. Conduct oversight, monitoring, evaluations, and periodic assessments of justice-related processes, consistent with the provisions of the Local Government Operationalization Act 2074 BS (2017).

*For the national government*

1. Amend laws to ensure consistency with the Constitution.
2. Amend transitional justice legislation to explicitly empower the TRC and CIEDP to make recommendations to local governments for designing and implementing reparations, creating a conducive environment for victims, protecting witnesses and the confidentiality of victim information, facilitating access to transitional justice processes by conflict victims, promoting reconciliation, and introducing vetting and institutional reform measures.
3. Conduct consultations on any proposed amendments to the TRC Act 2014 and trainings on those amendments when they are finalized.
4. Provide guidance and develop capacity of local governments on justice issues, including Mayors, Deputy Mayors, Ward Chairs, and Ward Members.

5. Improve the capacity of government bodies at all levels to conduct oversight and prevent corruption in the dispersal of reparations benefits and in the implementation of reparations policies.

*For civil society*

1. Monitor local government initiatives on behalf of conflict victims. Create watchdog groups to monitor implementation of reparations for victims, keep victims’ organizations abreast of developments, and take action in support of implementation in the event nothing is done.
2. Bar associations should provide free legal support to conflict victims.

## 1. Introduction

“You have heard our stories. You have heard our pain. Now, local governments have to provide services...they must address our needs.”<sup>4</sup>

These words reveal much about the pent-up frustration, sense of urgency, and expectation that conflict victims in Nepal feel after years spent waiting for redress. Since the war ended in 2006, conflict victims have been telling and retelling their stories about the human rights violations they suffered during the war: stories of killings, enforced disappearance and abduction, torture, physical mutilation, rape and sexual violence, forced eviction, and looting and the destruction of property. Despite repeated recitations of these facts, victims have not received reparations from the government; and only a very few have succeeded in obtaining compensation in court.<sup>5</sup> Some received limited relief under Nepal’s Interim Relief Program (IRP). But that relief was small in amount, did not include any form of acknowledgment or psychosocial support, and excluded entire categories of victims, including the many victims of torture and gender-based violence. Many victims have received nothing.

Notwithstanding the years of waiting, victims persist in their quest for truth, justice, and accountability for the abuses they suffered. Few have a choice. The harms were too great, the consequences too devastating and chronic: Physical disabilities, persistent pain, homelessness, anxiety and trauma, stigma, discrimination, and disaffection from family and community are among the hardships they bear. For many, extreme poverty and food scarcity are facts of life. Illiteracy resulting from years of missed schooling limits employment prospects. For women victims, the consequences of abuse are made worse by the economic and social limitations placed on women in Nepal’s patriarchal society. Most wives of the disappeared, for instance, still cannot claim ownership of property held in their husband’s name. Victims of sexual violence suffer in silence, rather than risk being shunned because of the crimes committed against them. Meanwhile, few perpetrators have faced prosecution.

Policy solutions for addressing these continuing and long-term problems have seemed perpetually out of reach. The entities tasked with advancing justice for victims—in particular, the Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Enforced Disappearance of Persons (CIEDP)—have lacked the requisite political support and resources necessary to conduct key operations and function effectively.

Yet now more than a decade since the end of the conflict, Nepal is in a position to reach its post-conflict commitments to transitional justice and to the United Nation’s Sustainable Development Goals for ensuring human rights, the rule of law, and equal access to justice, including for particularly vulnerable groups such as conflict victims. In September 2015, despite a series of devastating earthquakes that killed more than 8,500 people earlier that year, Nepal adopted a new Constitution, fulfilling a longstanding commitment of the parties to the peace agreements that concluded Nepal’s decade-long conflict.

The 2015 Constitution establishes a federalist system of government divided into three main levels—national, provincial, and local—each with constitutionally enumerated powers. (Figure 2 and Box 2.) Although the government had previously been divided into three administrative tiers, power had always been concentrated at the center in Kathmandu. Under the new Constitution, power is decentralized—devolved downward to subnational authorities. That decentralization is both administrative and fiscal and represents a significant shift in the way government has operated in Nepal.

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4 Statement of conflict victim from Kanchanpur Nepal at workshop held by ICTJ and The Story Kitchen on April 3, 2018.

5 See, e.g., Advocacy Forum, “[Discrimination and Irregularities: The Painful Tale of Interim Relief in Nepal](#)” (2010).





A conflict victim writes down priorities and proposal ideas during a workshop held in Mahendranagar, Kanchanpur District, in November 2018. (ICTJ)

Each level of government is now tasked with protecting not only Nepal’s sovereignty and national interests, but also with upholding the rule of law, human rights, and the separation of powers, and advancing an equitable society based on plurality and inclusive representation as well as the country’s overall development.<sup>6</sup> Local governments are now empowered to devise and implement programs across a range of sectors—education, health and sanitation, agriculture and livestock, social security, employment assistance, poverty alleviation, community development, and recordkeeping, among others. (See Table 1.) Funding for these expenditures is to come from revenue from local sources and fiscal equalization,<sup>7</sup> conditional grants,<sup>8</sup> complementary grants,<sup>9</sup> and special grants at the national and provincial levels.<sup>10</sup>

Consistent with these powers, many local governments are already undertaking needs-based assessments of victims and other vulnerable populations in their communities. Some have committed to implement specific initiatives in response to victims’ needs.<sup>11</sup> Thus, local governments hold significant potential power to help Nepal realize its many economic, social, cultural, environmental, and development aims, while also helping to achieve justice and redress for conflict victims at the local level.

This report aims to help local governments consider what they might do and how they might do it, by looking closely at the constitutional and legal provisions that define local governments’ jurisdiction, powers, and functions, with a particular focus on the powers to potentially address the harms suffered by conflict victims and their communities, under the 2015 Constitution and the Local Government Operationalization Act 2074 BS (2017 AD), and engage with the ongoing transitional justice processes of the TRC and CIEDP. As part of that discussion, the report presents the following information:

6 Constitution of Nepal (2015), art. 56(6).

7 Intergovernmental Fiscal Arrangement Act, 2074 (2017), Section 8.

8 *Ibid.*, Section 9.

9 *Ibid.*, Section 10.

10 *Ibid.*, Section 11.

11 ICTJ and JuRI-Nepal, “[Gender Newsletter](#)” (November 2017); and ICTJ and The Story Kitchen, “[Gender Newsletter: Dhangadhi](#)” (April 2018).



- Victims’ immediate and long-term needs (Table 1)
- Fundamental rights under the Constitution pertinent to conflict victims, as a vulnerable population (Tables 3 and 4)
- Relevant local government powers under the Local Government Operationalization Act, with broad implications for transitional justice (Table 5)

In addition, to provide stakeholders with an opportunity to express their views and to reflect on the role that local governments can serve in advancing victims’ rights, a series of consultations were held at both the national and local levels with a range of stakeholders. At the national level, on November 29, 2017, ICTJ, JuRI-Nepal, and Conflict Victims Common Platform (CVCP) co-organized a national-level consultation in Kathmandu with about 30 representatives from victims’ groups and civil society, human rights activists, and lawyers. District-level meetings and interviews were also conducted over a period of seven months in conflict-affected districts, beginning in November 2017 and ending in May 2018. These district-level meetings were attended by over 200 persons representing both sides in the conflict from Kavre, Bardiya, Banke, Kanchanpur, Kailali, and Chitwan Districts. Between January 2 and 5, 2018, JuRI-Nepal conducted five consultation meetings with local representatives, civil society organizations (CSOs), and victims of armed-conflict; and it then held two similar meetings in the Madi municipality, in Chitwan, one with local government representatives, and another with the victims of the Madi bus bombing (Bandarmude incident). In March through April 2018, ICTJ interviewed two Deputy Mayors and held roundtable discussions with civil society leaders, victims’ leaders, and members of victim communities in Kailali and Kanchanpur Districts to elicit information about how things were progressing now that local officials had taken their seats. It then conducted a final round of meetings at the end of May 2018.

Broadly, these meetings aimed to assess local government initiatives for formulating laws, policies, and plans to address transitional justice issues and for developing mechanisms necessary to implement them. JuRI-Nepal and ICTJ also sought to get a better sense of victims’ perceptions and expectations of local governments. During those discussions, the organizations explored, among other things, the possibility of local governments providing recognition to victims in the form of symbolic reparations, including the creation of local memorials.<sup>12</sup>

This report concludes by offering recommendations for engaging with local governments and for promoting transitional justice initiatives at the local level, in particular in regard to reparations and reconciliation.

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<sup>12</sup> This effort builds on previous research on truth and memory conducted by ICTJ and Martin Chautari. See ICTJ and Martin Chautari, [“We Cannot Forget: Truth and Memory in Post-Conflict Nepal”](#) (2017).

## 2. Background

Between 1996 and 2006, Nepal experienced an internal armed conflict between the government of Nepal and the (Maoist) Communist Party of Nepal. The origins of the conflict were rooted primarily in popular dissatisfaction with the country’s governance, socioeconomic systems, and discriminatory practices based on class, caste, gender, religion, and region.<sup>13</sup> During the conflict, the warring parties committed many violations of international human rights law, international humanitarian law, and domestic criminal law, including unlawful killings; enforced disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; arbitrary arrests; rape; and other types of sexual violence.

Recognizing many of the reasons for the conflict and the harms that resulted from it, the parties officially ended the conflict with the signing of a Comprehensive Peace Accord (the CPA) on November 21, 2006. In that and other agreements, the parties made a commitment to take steps to achieve a lasting peace. Among other things, they vowed to elect a constituent assembly for the purpose of writing a new Constitution and to take steps to address human rights violations committed during the conflict, including creating a high-level Truth and Reconciliation Commission. The new Constitution would guarantee “a progressive restructuring of the state to resolve existing class-based, ethnic, regional and gender problems.” This restructuring would be inclusive and democratic and would replace the state’s centralized structure with a federalist one.<sup>14</sup> The TRC was to investigate the human rights violations and “create an environment of reconciliation in society.”<sup>15</sup>

Previously, Nepal had practiced a unitary system of government, although ideas of federalism have deep roots in Nepal, dating back at least to the Terai Congress, a Madhes-based regional party in the 1950’s, and to 1990 and the end of the party-less Panchayat political system. Proponents of federalism envisioned it as a mechanism for promoting self-determination for historically disadvantaged groups and as a solution to longstanding social, economic, and political problems.<sup>16</sup> Under such a federalist structure, it was believed that local governments could help facilitate greater equality and fairness in society and enhance access to government for a wider group of people and promote their participation in it. Similar to many of the other reforms undertaken after the conflict, federalism aimed to address those longstanding inequities and discrimination in society that contributed to the conflict. Those inequalities had affected women, Dalits, indigenous people, the ethnic Madhesi communities in the Terai, the oppressed and excluded, and those from other minority communities.

Although federalism was seen by many as a mechanism for eliminating discrimination, whether based on class, caste, language, gender, culture, religion, or region, there were significant disagreements over the form and exact configuration that federalism should take, including

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13 The “40 Point Demand” put forward by the (Maoist) Communist Party of Nepal before launching the armed struggle included a significant number of demands related to economic, social, and cultural rights. Among these were equal property rights for women; the elimination of untouchability and caste-based discrimination; meaningful decentralization of power to ensure control of natural resources by local communities; the establishment of land ownership for actual tillers; the confiscation of land from landlords and redistribution among the landless; guarantees of the right to work and employment; provision of unemployment allowances until a work opportunity is provided; the liberation of poor farmers from agricultural debts or loans; access to fertilizers and seeds at affordable prices; humanitarian assistance to victims of natural disasters; control of inflation; minimum wages including for agricultural laborers; access to drinking water; the promotion of cottage industries; control of black markets and corruption; and special attention to vulnerable groups including orphans, the disabled, the elderly, and children. See [“40 Point Demand”](#) (February 4, 1996).

14 The CPA does not explicitly mention federalism, but instead calls for a restructuring “of the state to address the problems related to women, Dalit, indigenous people, Janajatis, Madhesi, oppressed, neglected and minority communities and backward regions by ending discrimination based on class, caste, language, gender, culture, religion, and region.” CPA, 3.5.

15 CPA, 5.2.5.

16 See inclusion of federalism in the First Amendment to the 2007 Interim Constitution. For a fuller discussion of federalism in Nepal, see Astri Suhrke, [“Restructuring the State: Federalist Dynamics in Nepal.”](#) Chr. Michelsen Institute (2014); UNDP, [“The Federalism Debate in Nepal”](#) (2014).

when drawing the boundaries and selecting the names of the provinces. Those disagreements were often fractious (sometimes turning violent) and thus took a long time to be resolved.

At the time of the writing of this report, the restructuring of the government from a unitary to a federal state was largely complete and other elements of the transition were progressing rapidly toward completion. Each level of government is tasked with protecting not only Nepal’s sovereignty, autonomy, territorial integrity, and national interests, but also with upholding the rule of law, human rights and fundamental rights, and the separation of powers and checks and balances, and advancing an equitable society based on plurality, equality, and inclusive representation and identity, as well as the country’s overall development.<sup>17</sup> Local governments are now empowered to devise and implement programs across a range of sectors—education, health and sanitation, agriculture and livestock, social security, employment assistance, poverty alleviation, community development, and recordkeeping, among others—with vast potential for realizing economic, social, cultural, environmental, and development aims.

In November and December 2017, Nepal held elections to choose members of the new government, including local governments. Elected officials have since taken their seats, and Nepal’s Legislature-Parliament has passed many laws necessary for implementing the new Constitution and the federalist system. At the time of the writing of this report, amendments to the TRC Act were under consideration and consultations with victims’ groups were being organized.<sup>18</sup>

Even with this progress, more still needs to be done to define the structure, competencies, and distribution of powers (both exclusive and concurrent) within and among the levels of government established by the Constitution, its schedules, and implementing legislation. At the national level, many existing statutes such as the National Human Rights Commission Act must be amended to reflect the new Constitution, and additional legislation must be drafted and enacted.<sup>19</sup> At the local level, guidelines, procedures, and regulations for operationalizing the functions, duties, and powers of local governments have only recently begun to be elaborated and finalized.

As such, there is still uncertainty about the jurisdiction and scope of local powers within the new legal framework and about how operations will be conducted between and among the different levels of government, including in the allocation of funds within the new budgetary structure. During interviews and coordination meetings, for instance, local representatives reported that they did not have a clear understanding of their role in transitional justice processes and expressed the need for training on post-conflict issues.<sup>20</sup> Similarly, victims’ groups and civil society organizations requested information about the current legal framework and what role they can play in ensuring that victims’ needs and interests are considered and addressed, especially given differences among victim populations and in their needs across localities.

To get a sense of the possible approaches for addressing victims’ needs that could be implemented at the local level, it is important to first look at what is already known about victims of conflict and the legal and transitional justice framework.

## Conflict-Related Violations of Human Rights

There is no uncertainty about the horrific nature of the human rights violations that victims suffered during the war and the harms and consequences that victims sustained. More than

17 2015 Constitution of Nepal, Article 56(6).

18 Himalayan Times, “[HRW, ICI call for Transitional Justice Reform](#),” July 9, 2018.

19 Himalayan Times, “[Preparations on to Draft 138 New Laws: Government to Amend 315 Existing Ones to Implement New Constitution](#),” October 19, 2015.

20 JuRI-Nepal, interviews with local government representatives in Bardiya (January 5, 2018). The CVC in Bardiya likewise requested capacity enhancement for its members on transitional justice and local powers during a meeting on January 2, 2018.

a decade since the conflict ended, significant information has been gathered about victims, their needs, the violations suffered, and the consequences of those violations. The ministries and agencies of the state, such as the Ministry of Peace and Reconciliation (MoPR) and the NHRC, civil society, and the international community have compiled and disseminated data and studies documenting those impacts.<sup>21</sup>

The types and scale of the atrocities committed during the conflict have been extensively delineated. In 2012, the UN Human Rights Committee reported that the conflict resulted in the deaths of about 16,729 persons, displacement of about 78,689, and disappearance of about 1,327 people, and caused severe damage to public infrastructure valued at approximately 5 billion rupees (approximately 50 million USD).<sup>22</sup> The UN Human Rights Commission has issued 11 decisions relating to cases of gross human rights violations, which found Nepal to be responsible for serious violations of the International Covenant on Civil and Political Rights, including enforced disappearance, torture, and extrajudicial execution.<sup>23</sup>

The TRC Act, among other sources, define the following specific human rights violations committed by the parties to the conflict:

1. Murder
2. Abduction and taking of hostages
3. Enforced disappearance
4. Causing mutilation or disability
5. Physical or mental torture
6. Rape and sexual violence
7. Looting, possession, damage, or arson of private or public property
8. Forceful eviction from house and land or any other kind of displacement
9. Any kind of inhuman acts inconsistent with international human rights or humanitarian law or other crimes against humanity<sup>24</sup>

As of March 2018, the CIEDP had received 3167 complaints of alleged enforced disappearance;<sup>25</sup> the TRC, which has a broader mandate,<sup>26</sup> had received 58,052 complaints of human rights violations.<sup>27</sup> These complaints are still under investigation, and neither commission has yet released a final report. However, much is already publicly known about the nature of those claims and the impact of the violations on victims.

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21 The Transitional Justice Reference Archive, a searchable [database](#) of around 30,000 cases compiled by Nepali civil society, the NHRC, and OHCHR.

22 UN Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the International Covenant on Civil and Political Rights,” CCPR/C/NPL/2 (June 8, 2012), 6.

23 See, e.g., the Real Rights Now [website](#) for more information about these cases.

24 TRC Act, Section 2(j). A proposed “Bill Made for Amending the Enforced Disappearances Enquiry, Truth and Reconciliation Act” would modify the list of violations slightly and categorize them in two broad categories as follows: “Gross violations of human rights” would include extrajudicial killing (or unlawful murder); enforced disappearance; torture; and rape or other sexual violence. “Other acts of human rights violation” would include abduction and hostage taking; causing mutilation or disability; looting, possession, damage or arson of private or public property; and forceful eviction from house or land or any kind of displacement. Unofficial translation of Amended Draft, Section 2.

25 Data available on the CIEDP [website](#).

26 The TRC focuses on killings, kidnappings, or the taking of hostages; physical assaults that caused disability; physical or mental torture; rape and sexual harassment; and damage against property including looting and arson. The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (2014), Section 13.

27 Data available at the TRC [website](#).

## Harms and Consequences Suffered by Victims

Findings from numerous studies spell out the multidimensional nature of the harms that afflict victims, including those that often affect women victims in particular, such as additional vulnerability to poverty and marginalization. ICTJ, for instance, has released a series of publications starting in 2008 that document the findings of several comprehensive surveys of conflict victims, including one in 2014 of more than 400 conflict victims in 10 districts of Nepal,<sup>28</sup> and others focusing on particular victim populations, such as women victims and the disappeared,<sup>29</sup> reparations,<sup>30</sup> truth and memory,<sup>31</sup> and transitional justice issues in Nepal more broadly.<sup>32</sup>

Most recently, in May 2018, CVCP published an advocacy paper titled “Reparative Needs, Rights, and Demands of Victims of the Armed Conflict in Nepal,” which presented findings of a comprehensive study of conflict victims’ common reparative needs, as well as reparative needs of specific categories of conflict victims.<sup>33</sup> And in June 2018, 28 women conflict victims came together in Kathmandu and drafted a “Women Victims of Conflict Justice Manifesto,” detailing their needs and demands.<sup>34</sup>



Women conflict victims prepare their demands for a meeting with local government officials during a workshop held in Nepalgunj, Banke District, in March 2018. (ICTJ)

Thus, there is no need to start over. As part of the in-depth surveys conducted by ICTJ in 2014, victims (both male and female) were asked to identify their immediate needs and long-term aspirations or expectations for reparative justice.<sup>35</sup> More recently, in November 2017 and in March and April 2018, ICTJ, with the assistance of JuRI-Nepal and The Story Kitchen, conducted a series of six workshops focused on women victims on both sides of the conflict—state and Maoist—to elicit information about their understanding of current opportunities for seeking reparations, truth, and justice and to make their particular needs and priorities known to local and national government officials.<sup>36</sup> In addition, JuRI-Nepal consulted with members

28 ICTJ and Advocacy Forum, [“Nepali Voices: Perceptions of Truth, Justice, Reconciliation, Reparations and the Transition in Nepal”](#) (2008); ICTJ, [“To Walk Freely with a Wide Heart: A Study of the Needs and Aspirations for Reparative Justice of Victims of Conflict Related Abuses in Nepal”](#) (2014).

29 Madeleine Fullard, [“Disappearances in Nepal”](#) (2008); ICTJ and Advocacy Forum, [“Across the Lines: The Impact of Nepal’s Conflict on Women”](#) (2010); ICTJ, [“Beyond Relief: Addressing the Rights and Needs of Nepal’s Wives of the Disappeared”](#) (2013).

30 ICTJ, [“From Relief to Reparations: Listening to the Voices of Victims”](#) (2012); Ruben Carranza, [“Relief, Reparations, and the Root Causes of Conflict in Nepal”](#) (2012).

31 ICTJ and Martin Chautari, [“We Cannot Forget: Truth and Memory in Post-Conflict Nepal”](#) (2016).

32 Elena Naughton, [“Pursuing Truth, Justice, and Redress in Nepal”](#) (2018).

33 [Facebook, UN Women Nepal](#); Ram Kumar Bhandari, [“Opinion: Nepali War Victims Demand Real Reparations and Remembrance, Justice.”](#) Info.Net, May 13, 2018.

34 “Women Victims of Conflict Justice Manifesto” (June 28, 2018), Kathmandu, Nepal. In 2010, ICTJ helped victims compile a similar document at a national hearing on women’s perspectives on transitional justice. There, participants discussed and finalized a “Women’s Transitional Justice Manifesto.”

35 ICTJ, [“To Walk Freely with a Wide Heart: A Study of the Needs and Aspirations for Reparative Justice of Victims of Conflict-Related Abuses in Nepal”](#) (2014), 32-41.

36 ICTJ and JuRI-Nepal, [“Gender Newsletter”](#) (November 2017); ICTJ and The Story Kitchen, [“Gender Newsletter: Dhangadhi!”](#) (April 2018).



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We call on the government to acknowledge our suffering and to understand the depth of our need for justice for the terrible crimes perpetrated against us... Our quest for justice [has] become unexpectedly long. Each and every day we suffer. Each and every day we feel tired from all the waiting.<sup>39</sup>

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of Bardiya’s Conflict Victims Committee (CVC),<sup>37</sup> as well as the Banderlude Victims Struggle Committee.<sup>38</sup>

Although there are differences between men and women in terms of what they choose to prioritize and when, there is significant consistency over time and across victims’ groups in terms of what is needed. At the broadest level, victims want to know the truth about past violations, including about the fate of those forcibly disappeared, missing, or abducted; they want to see criminal accountability for perpetrators; they want to receive reparations according

to the harms they experienced; and they want to be treated with dignity. In many instances, victims emphasized that their children were entitled to benefits, because they too suffered harms as a result of the human rights violations.

Among the immediate and long-term needs specified by victims are the following.

**Table 1: Victims’ Immediate and Long-Term Needs**

Immediate and Long-Term Needs	Description
<i>Socioeconomic</i>	Described variously as financial support and “food, shelter, and clothing,” socioeconomic needs are usually at the top of the list of victims’ immediate priorities. Financial support includes various forms of monetary support, such as social security assistance and allowances for single women. <sup>40</sup> These basic subsistence or livelihood needs are a right to which victims are entitled, not simply as citizens of Nepal, but also as victims of human rights abuses.
<i>Employment and job creation</i>	Victims seek broad-based help finding, applying for, and obtaining employment. Some are interested in working in government agencies and on government projects and express an interest in obtaining the types of vocational and skill-based training that would make that possible. Many others seek assistance from the government perhaps in the form of no- or low-interest loans to establish a business (e.g., in the beauty sector, mushroom and goat farming, food services, and candle making). <sup>41</sup> In some instances, victims acknowledged that they would face significant challenges in starting and sustaining a profitable business and asked that the government itself start and operate businesses where victims might be employed. <i>(continued)</i>

37 Meeting with the CVC (January 2, 2018), Gulariya, Bardiya.

38 Consultation with the Banderlude Victims Struggle Committee (January 7, 2018), Madi, Chitwan.

39 “Women Victims of Conflict Justice Manifesto” (June 28, 2018), Kathmandu, Nepal.

40 ICTJ, “To Walk Freely with a Wide Heart: A Study of the Needs and Aspirations for Reparative Justice of Victims of Conflict-Related Abuses in Nepal” (2014), 32.

41 In the 2018 “Women Victims of Conflict Justice Manifesto,” for instance, victims demanded “micro loan targeting to the conflict victims without mortgage or without interest. Establishing micro-credit facilities targeting conflict victims.”

<p><i>Free medical care</i></p>	<p>Health care is an urgent need of many victims. Most suffer from physical and mental ailments caused by human rights abuses and other conflict-related violence and need both physical and mental health care, including psychosocial counseling for anxiety and trauma. In addition, many categories of victims, including victims of sexual violence, require specialized medical care, which in some instances is only available in Kathmandu or abroad in India. To protect their privacy, many victims would prefer that medical appointments do not occur locally and that they meet with doctors “alone in a private place.”<sup>42</sup></p>
<p><i>Education</i></p>	<p>Many victims stopped attending school during the war and often were unable to resume their studies afterwards. As such, victims seek not only remedial and vocational (skill-based) educational benefits for themselves and their children, including for those older than 18 years of age, but also opportunities to pursue higher education. A particularly vulnerable class of victims in need of educational benefits are illiterate conflict victims.</p>
<p><i>Housing</i></p>	<p>Affordable or free housing for homeless victims. This includes not only those who were displaced or lost their homes as a result of the conflict, but also those who were ostracized because of the crimes they suffered (e.g., victims of rape or other sexual violence).</p>
<p><i>Legal services</i></p>	<p>Many conflict victims need assistance with basic legal services or seek reimbursement for legal costs. For instance, some spouses or families of the disappeared still need help securing their rights to land or other property; others are interested in pursuing criminal or other proceedings or in obtaining birth or citizenship documents for their children. During the conflict, it was sometimes impossible to register personal events as required by law, or impermissible due to their unrecognized status (e.g., children born of rape or as a result of “false marriages” with security personnel or Maoists cadres), leaving those affected in legal limbo.<sup>43</sup></p>
<p><i>Documentation</i></p>	<p>Victim identification (ID) cards are repeatedly cited as a necessity by victims, because they can establish eligibility for benefits and constitute a form of symbolic recognition of their status as survivors of human rights abuses. Without victim ID cards, victims often have difficulty following through on the “recommendations” required for accessing care and services. Ultimately, however, it will be necessary for the national government to provide victim ID cards and decide who will receive them. (For instance, would the family of a victim receive one such card, or more if family members have different needs?)<sup>44</sup> For now, however, at the local level, governments might be able to provide other forms of documentation (e.g., letters of acknowledgment or other verification showing that victims filed a complaint with one of the commissions) that victims could present in lieu of victim ID cards when requesting assistance.</p> <p style="text-align: right;"><i>(continued)</i></p>

42 “Women Victims of Conflict Justice Manifesto” (June 28, 2018), Kathmandu, Nepal.

43 ICTJ, “[Across the Lines: The Impact of Nepal’s Conflict on Women](#)” (2010).

44 During recent consultations with victims of the 2005 attack on an overcrowded bus in Bandarmude in Madi in

<p><i>Memorials, public recognition, and acknowledgment</i></p>	<p>Memorials continue to be a major priority of victims, with many local initiatives already underway. But many victims express a desire for additional memorials to honor and respect victims. Victims have variously sought a “National Day for Victims” and a museum (or house) to memorialize victims. Victims call on the government to give priority to their proposals for museums and memorials and to rename public schools, hospitals, roads, parks, and monuments in honor of victims, among other things.<sup>45</sup> They have also expressed concern about a lack of perceived commitment to and resources for maintaining those memorials that have already been built.<sup>46</sup></p>
<p><i>Raising awareness</i></p>	<p>Raising awareness within their communities and families to reduce negative societal perceptions of conflict victims.<sup>47</sup> Official public apologies, perhaps by a head of state or other high-level state officials, including local authorities, could go a long way toward acknowledging the wrongdoing that occurred and make it clear that victims were not and are not responsible.</p>
<p><i>Nonrecurrence</i></p>	<p>Some victims seek measures aimed at preventing or supporting the nonrecurrence of human rights abuses. These include personal safety measures, as well as protection from future human rights abuses. For instance, victims ask the government to adopt concepts of equity and to end “gender discrimination for truth, justice, dignity and reparation,” and other measures with the potential for transformative change.<sup>48</sup></p>

After conducting consultations, local governments may address many of the needs cited by victims, using the powers delegated to them, as discussed below.<sup>49</sup>

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Chitwan, victims stated that the memorial built in memory of the almost 40 people killed and 75 people injured is not sufficient. Instead, they would also like to be officially acknowledged with an identity card entitling them to benefits.

45 “Women Victims of Conflict Justice Manifesto” (June 28, 2018), Kathmandu, Nepal.

46 In a meeting on January 8, 2018, members of the Bandarmude Victims Struggle Committee expressed concern about the conservation and further development of the Bandarmude Memorial they had constructed.

47 As part of a community reparation program in Morocco, for instance, “awareness days” were organized in communities to raise awareness about the objectives of the programs. Kingdom of Morocco National Human Rights Council, “A Memory for The Future: Awareness Days In Hay Mohammadi on The Community Reparation Program,” available at the website of the Kingdom of Morocco, National Human Rights Council.

48 “Women Victims of Conflict Justice Manifesto” (June 28, 2018), Kathmandu, Nepal.

49 Victim representatives both in Bardiya and in Madi, Chitwan, indicated that local governments should cooperate with victim committees and groups and consult with them when making decisions or formulating local plans and policies concerning memorialization or before initiating any activity in support of or in the name of conflict victims. They also emphasized that they should be included not only in the committees that directly deal with them, but also in committees tasked with local development-related initiatives.



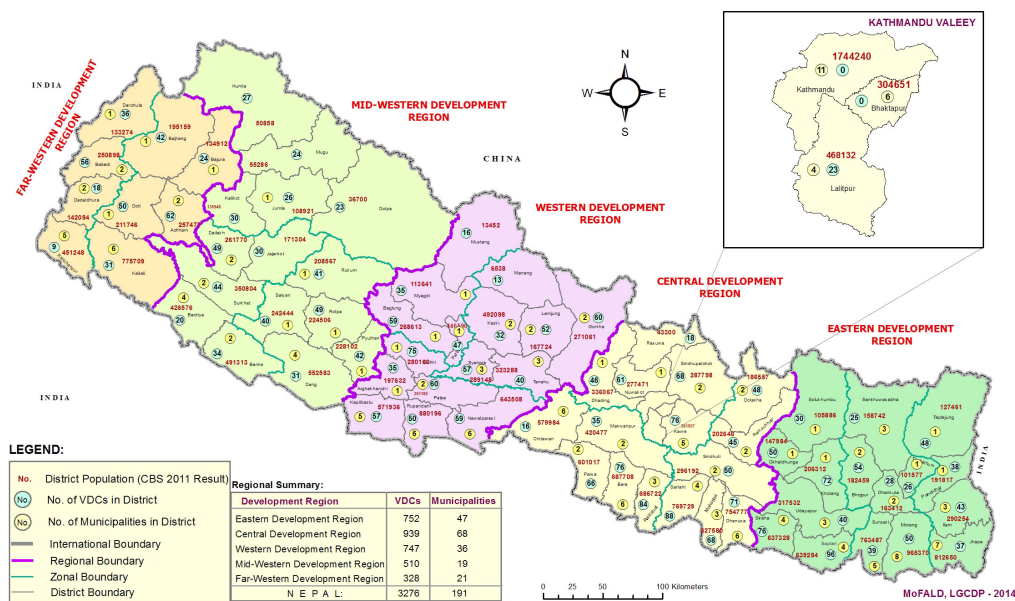
### 3. Restructuring the Government

#### Nepal’s Unitary System of Government

Under the 2007 Interim Constitution, Nepal’s unitary system of government consisted of the central government in Kathmandu, where the vast majority of power was concentrated, five development regions, and 75 districts with administrative capacity. Municipalities and Village Development Committees (VDC) could be created with the “consent and participation of the political parties,”<sup>50</sup> pending adoption of the final Constitution.

Under the old system, the former local bodies numbered over 3,900 separate entities, but were largely extensions of the central (i.e., national) government. Under the then existing Local Self-Governance Act 2055 (1999),<sup>51</sup> they were responsible for such functions as establishing local self-development plans, maintaining infrastructure, and collecting revenue on behalf of the center.

Figure 1: Number of Village Development Communities and Municipalities in Nepal Under the Unitary System of Government



Source: UNDP Nepal, Local Government and Community Development Programme.

#### The New Federal Structure

Under the federal system, each level of government has an obligation to respect, protect, and fulfill the rights guaranteed under the Constitution.<sup>52</sup> There is also a clear constitutional imperative that the federation, provinces, and local governments are bound to protect “human rights and fundamental rights,” uphold the “rule of law,” and advance an “egalitarian society based on pluralism, equality, inclusive representation and identity.”<sup>53</sup>

50 Interim Constitution of Nepal (2007), Article 139.  
 51 Ministry of Law and Justice, Local Self-Governance Act 2055 (1999).  
 52 Constitution of Nepal (2015), Part 3, Fundamental Rights and Duty.  
 53 Ibid., Preamble.

Although the federal structure bears many similarities to the old unitary system, in that the country was subdivided into progressively smaller units, the numbers, configuration, powers, and fiscal structure under federalism are different.

### Political Restructuring

The federal system restructures the country into 753 local units grouped under the following four categories: metropolitan cities, sub-metropolitan cities, municipalities, and rural municipalities.<sup>54</sup> The 75 existing districts have been replaced by 77 new District Coordination Committees (DCC) that have responsibility for coordinating among the local governments in their districts. The most local unit of government is the ward; wards now total 6,554.<sup>55</sup> See Table 2.

As part of the restructuring, the MoPR that was created in 2006 to facilitate all peacebuilding processes in the country, including implementation of the IRP for conflict affected persons, was dissolved. The Ministry of Law and Justice is now responsible for overseeing the two commissions,<sup>56</sup> although there is less clarity about which government agency will be tasked with implementing reparations measures, if and when the commissions issue them.<sup>57</sup>

Table 2: Local Government Bodies in Numbers<sup>58</sup>

Province	Total Number of Districts	Rural Municipalities (gaon palikas)	Municipalities (nagar palikas)	Sub Metropolitan Cities	Metropolitan Cities	Wards within the Local Government Structure by Province
1	14	88	46	2	1	1157
2	8	60	72	3	1	1094
3	13	74	41	1	3	1117
4	11	58	26	0	1	830
5	12	73	32	4	0	982
6	10	53	26	0	0	645
7	9	54	33	1	0	729
	<b>77</b>	<b>460</b>	<b>276</b>	<b>11</b>	<b>6</b>	<b>6554</b>
<b>753 Local Governments</b>						

Source: Calculations based on data from Open Data Nepal.

### Fiscal Restructuring

Along with this political restructuring, the federalism implemented in Nepal also involved a restructuring of the country’s fiscal framework. This fiscal restructuring affects both the distribution of taxes and other revenue among the levels of government and the process for establishing budgets.

54 There are currently 6 metropolitan cities (the capital of Kathmandu, Bharatpur, Biratnagar, Pokhara, Lalitpur, and Birgunj), 11 sub-metropolitan cities, 276 municipalities, and 460 rural municipalities.

55 [Open Data Nepal](#).

56 Kathmandu Post, [CIEDP Calls for Early Amendment of Act on Transitional Justice](#), April 17, 2018.

57 Under the current TRC Act 2014, if the commissions are dissolved, the property and obligations of the commissions are to devolve to the MoPR (TRC Act 2014, Article 39). Amendments to the TRC currently under consideration would divide responsibility as follows: The Ministry of Home Affairs would be responsible for reparations and the return of property, and the Ministry of Law, Justice, and Parliamentary Affairs for other matters.

58 As defined in the 2015 Constitution, Schedule 4, Nepal is divided into 7 provinces and 77 districts. Two districts, Rukum and Nawalparasi, however, are split in two and divided between two different provinces (Nawalparasi East in Province 4, Nawalparasi West in Province 5, Rukum East in Province 5, and Rukum West in Province 6). Open Data Nepal separates the districts into 75 units. When compiling the number of wards, the authors have categorized Nawalparasi as Province 4 and Rukum as Province 5.

The budgeting process in Nepal begins in January and ends in July, when the new fiscal year starts. The current budget process for local level government has changed slightly from the Local Self Governance Act of 1999. Under the 1999 act, the budget guidelines for the federal budget would pass from the National Planning Commission (NPC) to the DCC, and then from the DDC to the VDC. The guidelines would then circle back to the NPC for consolidation and approval by Parliament. Now, the NPC provides the federal budget guidelines to the provincial governments, which still use the DCCs to coordinate between the local, provincial, and federal levels of government. The DDCs then pass the guidelines to the local governments. The local governments have to comply with federal and provincial budgetary laws and also create their own regulations and mechanisms for budgeting and collecting revenue at the local level.<sup>59</sup>

At the level of local government, the process is participatory in principle: The wards—which are the most grassroots, local elected bodies involved in the budget cycle—are responsible for producing a needs assessment and tentative budget allocation that reflects the list of desired programs under their “wardship.” This budget allocation is then sent to the Municipal or Village Executive for review. That review is followed by a discussion at the Municipal or Village Assembly and a full budget is prepared and consolidated that represents local government priorities. When the budget relates only to local government expenditures, the approval of the Municipal or Village Assembly is sufficient to approve the local government budget.

Revenue allocation among the levels of government is also different in the new federal structure. Under the Constitution, all revenue received by the government of Nepal is credited to the Federal Consolidated Fund, which is used for general expenditures, including the salaries of top government officials, state debts, judgments against the government, and monies appropriated under appropriation acts.<sup>60</sup> Budget allocations are made out of a divisible fund to the seven provinces and to the 753 local bodies in the form of equalization, conditional, complementary, and special grants, as specified under the Intergovernmental Fiscal Transfer Act, 2017.

Equalization grants are based on need and revenue capacity,<sup>61</sup> whereas special, complementary, and conditional grants are provided to provincial and local governments for projects and activities of a special nature identified by them.<sup>62</sup> Revenue allocations for the purpose of

59 According to the Constitution of Nepal (2015), Article 59, on the exercise of financial powers, “the Federation, State and Local level shall make laws, make annual budget, decisions, formulate and implement policies and plans on any matters related to financial powers within their respective jurisdictions.”

60 Constitution of Nepal (2015), Article 205.

61 Intergovernmental Fiscal Transfer Act (2017), Section 8. “*Fiscal Equalization Grants*: (1) The Government of Nepal shall, on the recommendation of the Commission, distribute fiscal equalization grants to the State and Local Level on the basis of their need for expenditures and revenue capacity. (2) The State shall distribute fiscal equalization grants to the Local Level falling under its domain from the grants obtained from the Government of Nepal under Sub-Section (1) and from its resources in accordance with the State law on the basis of their need for expenditures and revenue capacity.”

62 Ibid., Section 9. “*Conditional Grants*: (1) The Government of Nepal shall provide conditional grants to the State and Local Level to implement any project of the State or Local Level or the Government of Nepal on the basis as prescribed by the Commission pursuant to Clause (c) of Sub-Article (1) of Article 251 of the Constitution. (2) The Government of Nepal may, while providing conditional grants under Sub-Section (1), specify necessary terms and conditions in relation to the implementation of the project and the concerned State and Local Level shall abide by such terms and conditions. (3) The State may provide conditional grants to Local level according to the basis prescribed by the Commission in accordance with the State laws. Section 10. *Complementary Grants*: (1) The Government of Nepal may provide complementary grants to the State and Local Level to implement any project related to infrastructure development. (2) While providing complementary grants pursuant to Sub-Section (1), the following criteria shall be taken into account: (a) Feasibility of the project, (b) Project cost, (c) Outputs or benefits to be achieved from the project, (d) Financial and physical capacity or human resources for the implementation of the project, (e) Need and priority of the project. (3) The State may provide complementary grants to the Local Level in accordance with State law. (4) The Complementary Grants pursuant to Sub-Section (1) and (3) shall be provided on the basis of ratio of total cost of any project. (5) The procedure and other provisions to provide complementary grants shall be as prescribed by the Government of Nepal. Section 11. *Special Grants*: (1) The Government of Nepal may provide special grants for any specific project to be operated by the State or Local Level having any of the following objectives: (a) to develop and deliver basic services like education, health and drinking water, (b) to achieve balanced development of inter-State or inter-local level, (c) to uplift or develop the class or community discriminated economically, socially or in any other form. (2) The State may provide special grants to the Local Level in accordance with State law. (3) The procedure and other provisions to provide special grants shall be as

benefitting victims, their families, and communities might be allocated from these different grants.

## Legal Framework

The basic legal framework empowering local governments to decide upon and implement policies to benefit the citizens within their jurisdiction, including conflict victims, is set out in the 2015 Constitution and the Local Government Operationalization Act. Each defines the jurisdiction, powers, and functions of local governments and are the primary sources for understanding what local governments can do and how they can do it.

Other existing laws that remain in force,<sup>63</sup> for instance the TRC Act, establish parameters for how local government must engage with ongoing transitional justice mechanisms and articulate the reasons why reparations and transitional justice measures can and should be implemented in Nepal, including by local governments. These reasons include bringing out the truth about human rights violations, creating an environment of sustainable peace and reconciliation, enhancing the spirit of mutual trust and tolerance, and making recommendations for legal actions against perpetrators—accountability—and for providing reparation for victims.

Although, under the TRC Act, local governments do not have a direct role in day-to-day operations of the two commissions, they do have a role in supporting the transitional justice process and implementing recommendations issued by the commissions, including administering any individual and collective reparations initiatives and assisting families of the missing and those tasked with locating, recovering, and returning remains to families of disappeared persons.

## Powers of the Local Government

The Constitution equips the local level of government with executive,<sup>64</sup> legislative,<sup>65</sup> and judicial powers.<sup>66</sup> (Figure 2.) While executive powers are vested in the Village Executive or the Municipal Executive, the Municipal Council, and Village Council have legislative powers. Legislative and executive powers are exercised within the limits of the competencies listed under the Constitution.<sup>67</sup> The judicial power of the local government is exercised by a three-member judicial committee to be coordinated by its Vice-Chairperson.<sup>68</sup>

In addition to the judicial committees, separate local courts or dispute resolution bodies can also be created at the local level.<sup>69</sup>

The Constitution specifies the exclusive and the concurrent powers of the three levels of the government in Schedules 5 (federal), 6 (provincial), 7 and 9 (concurrent), and 8 (local). The autonomy of the local government to exercise its legislative and executive power without interference by the provincial and federal government is guaranteed,<sup>70</sup> including in relation to

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prescribed by the Government of Nepal.”

63 Constitution of Nepal (2015), Article 304. Article 304 states that existing laws remain in force: “(1) The Nepal laws in force at the time of commencement of this Constitution shall continue to be in force until such laws are repealed or amended. Provided that any law which is inconsistent with this Constitution shall ipso facto be invalid to the extent of such inconsistency, after one year of the date on which the first session of the Federal Parliament set forth in this Constitution is held. (2) Acts relating to peace process under the Interim Constitution of Nepal, 2007 (2063) shall be deemed to have been done under this Constitution.”

64 Ibid., Article 214.

65 Ibid., Article 221.

66 Ibid., Article 217.

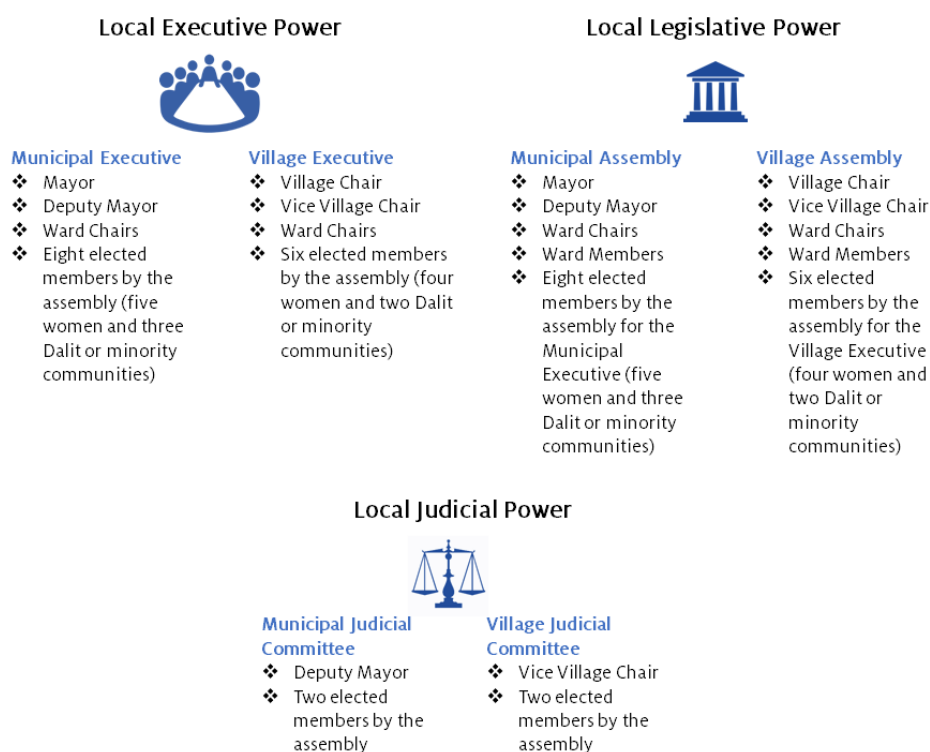
67 Ibid., Part 17-18.

68 Ibid., Article 217.

69 Ibid., Article 127(2).

70 Ibid., Part 17-18, Schedule 8.

Figure 2: Separation and Composition of Local Powers



resources and making and implementing decisions under its assigned functions. In the event of a dispute, the Constitutional Bench of the Supreme Court is entrusted with the power to adjudicate.<sup>71</sup>

Many of the competencies of the local government are directly linked to the economic, social, and cultural problems that have been identified by victims as immediate and longer-term needs (Table 1).

A few of these powers also fall under the concurrent powers of the “Federation and the State,”<sup>72</sup> as well as the concurrent powers of the “Federation, the Province and the Local Government,”<sup>73</sup> enumerated in Schedules 7 and 9, respectively. Residual power is vested in the federation,<sup>74</sup> and the exercise of lawmaking powers at the local level must be consistent with federal law.<sup>75</sup>

### Ensuring Fundamental Rights

The Constitution adopted in 2015 guarantees many fundamental freedoms and rights to citizens. Some of these rights, including the right to be free from torture,<sup>76</sup> the right to privacy,<sup>77</sup> and the “right to demand and receive information on any matter of public importance,”<sup>78</sup> were guaranteed under previous constitutions, including the one promulgated in 1990, before the advent of the war; other rights were introduced in the 2015 Constitution.<sup>79</sup>

71 Ibid., Article 137.

72 Ibid., Schedule 7.

73 Ibid., Schedule 9.

74 Ibid., Article 58.

75 Ibid., Article 57(6) states that as specified by the Constitution, “any law to be made by the State Assembly, Village and Municipal Assembly in relation to the competencies shall be made as not to be inconsistent with the federal law.”

76 Constitution of Nepal (2009), Article 14(4).

77 Ibid., Article 22.

78 Ibid., Article 16.

79 Including among others a comprehensive right to social justice (Article 42), additional provisions providing women with a right to equal lineage (Article 38) and prohibiting child marriage, trafficking, and the abduction of children (Article 39), as well as additional policies relating to social justice and inclusion for victims of conflict (Article 51j(2)).

### Box 1: Powers of the Local Government Specified Under Schedule 8

1. Town police
2. Cooperative institutions
3. Operation of F.M. radio
4. Local taxes (wealth tax, house rental tax, land and building registration fee, motor vehicle tax), service charge, tourism fee, advertisement tax, business tax, land revenue tax, entertainment tax, and land revenue collection
5. Management of local services
6. Collection of local statistics and records
7. Local level development plans and projects
8. Primary and secondary education
9. Basic health and sanitation
10. Management of local markets, environmental conservation, and biological diversity
11. Irrigation and local, rural, and agricultural roads
12. Management of Village Assembly, Municipal Assembly, District Assembly, local courts, mediation, and arbitration
13. Local records management
14. Distribution of house and land ownership certificates
15. Agriculture and animal husbandry, agricultural products management, animal health, and cooperatives
16. Management of senior citizens, persons with disabilities, and the incapacitated
17. Collection of unemployment statistics
18. Management, operation, and control of agriculture using improved technologies to increase production
19. Water supply, small hydropower projects, and alternative energy
20. Disaster management
21. Protection of watersheds, wildlife, mines, and minerals
22. Protection and development of languages, cultures, and fine arts

Many of these guarantees are framed as positive rights and are justiciable without the need for implementing legislation, although the government of Nepal is required to enact any legal provisions necessary for implementing the constitutionally protected rights “within three years.”<sup>80</sup> As such, local governments in Nepal, similar to the other tiers of government, have formal responsibility to protect these fundamental rights and to provide the services needed to fulfill them.<sup>81</sup> (Table 3.) To be effective, those services should encompass reparations that are “adequate, effective and prompt for the harm suffered” and should include “access to relevant information concerning violations and reparation mechanisms,” as required by the UN General Assembly in its Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Guidelines).<sup>82</sup>

The following fundamental rights have particular significance for victims and for the local governments responsible for securing and protecting those rights.

80 Constitution of Nepal (2015), Article 47.

81 *Ibid.*, Article 56(6).

82 UN Basic Guidelines, 2(c), 11(c).



Table 3: Fundamental Rights Under the Constitution

Fundamental Right	Pertinence for Conflict Victims
<i>Right to live with dignity</i>	<p>Under the Constitution, every person has the right to live with dignity.<sup>83</sup> This right is non-derogable.<sup>84</sup> The human rights violations suffered by victims during the war “by their very grave nature constitute an affront to human dignity.”<sup>85</sup> Victims continue to face affronts to their dignity in their daily lives in the form of humiliation, stigma, and discrimination because of their status as victims.</p> <p>To address this harm, local governments should take steps to restore victims’ dignity by acknowledging what happened to them and affirming that they are not to blame. Reparations, as described by victims, “must be understood not only as monetary support, but also as a means to restore dignity and address other needs of the victims.”<sup>86</sup> This means, for instance, implementing measures of symbolic reparation, such as apologies and memorialization initiatives,<sup>87</sup> that recognize the rights, dignity, and status of victims and help rebuild relationships within their communities. It also means recovering the remains of the missing and returning them to the family in a way that safeguards the dignity of the deceased and their family.</p>
<i>Right to information</i>	<p>Two provisions of the Constitution guarantee the right to information. The first is a general right to information, to which every citizen is entitled.<sup>88</sup> The second is specific to victims of crime.<sup>89</sup> Many conflict victims are in dire need of information to establish the truth about the violations that they or their loved ones suffered.<sup>90</sup> This is particularly true of families of persons who were forcibly disappeared or abducted, but it also applies to victims of other serious violations of human rights. That information could include information about the fate of the missing, the location of their bodies, the identity of the perpetrators, and the status of operations at the TRC and CIEDP. There are also a significant number of conflict-era land disputes that are still outstanding, some that might be resolved with publicly available information. All this information can be provided consistent with other confidentiality requirements.</p> <p style="text-align: right;"><i>(continued)</i></p>

83 Constitution of Nepal (2015), Article 16.

84 Ibid., Article 273(10).

85 UN Basic Guidelines, Preamble.

86 “Women Victims of Conflict Justice Manifesto” (June 28, 2018), Kathmandu, Nepal.

87 In 2010, Sierra Leone’s President Ernest Bai Koroma apologized to the women of Sierra Leone for the brutalities they suffered during the armed conflict, saying “We will never as a nation move forward if we do not apologize to the women of this country for letting them down during the war; we will never as a nation know better days if we do not ask for the forgiveness of our mothers, sisters, partners, and female compatriots for what we let them go through during the war. It is almost a decade now since the war ended, but we must apologize for the wrongs of the war.”

88 Constitution of Nepal (2015), Article 27.

89 Ibid., Article 21.

90 “Women Victims of Conflict Justice Manifesto” (June 28, 2018), Kathmandu, Nepal. “We want information. For too long, we have been told little or nothing about what is happening. Some government officials turn us away. Some refuse to answer our questions. Others are too far away for us to reach. We want the government to tell us the status of what is happening in the transitional justice process, at the commissions, about ensuring justice for us. [To] date, we receive different answers from the responsible authorities although we ask the same question.”

<i>Right to health</i>	Although free basic and emergency “health services” are guaranteed in the Constitution, <sup>91</sup> many victims continue to suffer from severe health consequences caused by human rights violations, including reproductive disorders (e.g., chronic infections and prolapsed uteruses), untreated wounds, and physical and mental disabilities resulting, for example, from torture. These health issues may result in increased levels of morbidity and mortality and may also have a serious impact on victims’ livelihood and economic potential.
<i>Right to food</i>	Because of stigma, years of lost education, and chronic physical conditions, many victims face difficulties securing jobs sufficient to sustain themselves. As a result, many victims experience severe hunger and food scarcity that threatens their well-being, despite the constitutionally protected right to food and the right to be safe from food scarcity. <sup>92</sup> Food insecurity affects not just direct victims, but also their children and extended families. Complications of food scarcity include malnutrition and possible death, as well as the reduction in an individual’s educational and income-earning potential.
<i>Right to housing</i>	Conflict victims also complain about homelessness. Some were rendered homeless during the war by the destruction or loss of property; others, such as many sexual violence victims, faced eviction after family members rejected them. The Constitution guarantees a minimum level of “appropriate housing” that governments should meet. <sup>93</sup>
<i>Right to education</i>	Many victims suffered disruptions to their education during the war, further exacerbating the many hardships they face as conflict victims. Many, for instance, are illiterate, with literacy levels generally lower for women than men. <sup>94</sup> As such, many could benefit from the free education to which every citizen is entitled, “up to the secondary level from the State.” <sup>95</sup> However, given that is not practical for many victims to attend classes in the ordinary course (e.g., because they have aged out or have work or family responsibilities), flexible programming is needed to allow victims of different ages, educational levels, and social situations to participate. Skill-based, informal, remedial, and vocational training should all be considered. Victims’ children should be eligible to participate as well, and should be given scholarships, especially for pursuing higher educational opportunities.

### Priority Rights to Essential Services for Victims and the Vulnerable

Along with the rights guaranteed to conflict victims as citizens, victims are guaranteed rights by virtue of their status as victims and as members of various vulnerable groups, including victims of crime, the indigent and economically very poor, single women, the disabled, and senior citizens. (Table 4.)

91 Constitution of Nepal (2015), Article 35.

92 Ibid., Article 36(1), Article 36(2).

93 Ibid., Article 31(1).

94 ICTJ, “Across the Lines: The Impact of Nepal’s Conflict on Women” (2010), 20.

95 Constitution of Nepal (2015), Article 31(2).



For instance, the Constitution establishes a “right to social justice” that is particularly pertinent to victims of conflict. Under that provision, based on principles of equality of resources and against poverty, conflict victims have the right to certain essential basic services on a priority basis, “with justice and due respect, in education, health, employment, housing and social security, in accordance with law.”<sup>96</sup>

The persons entitled to priority services under the social justice provision include the following:

- martyrs who have sacrificed their lives
- persons who were forcibly disappeared
- persons who became disabled and injured in all people’s movements, armed conflicts, and revolutions that have been carried out for progressive democratic changes in Nepal
- democracy fighters
- conflict victims
- the displaced
- persons with disabilities
- the injured<sup>97</sup>

Victims may fall under one or more of these categories. Some individuals have suffered multiple violations, faced collective harms, or both as a result of violations committed against family members or their community.<sup>98</sup>

In addition, under the Constitution, other types of vulnerabilities may be taken into account when prioritizing among those individuals who are eligible for certain forms of essential services.

**Table 4: Vulnerable Populations Under the Constitution**

Vulnerable Groups	Benefits
<i>Victims of Crime</i>	As victims of crimes, conflict victims are entitled to receive information about investigations and proceedings in which they are a victim. In addition, they also “have the right to justice, including social rehabilitation and compensation in accordance with law.” <sup>99</sup> These provisions are especially important for victims of enforced disappearance, who are still seeking information about their loved ones. Given that the crime of enforced disappearance is a continuous offense, local governments should release information held by the government, the TRC and CEIDP, or the courts adjudicating cases, consistent with conflict victims’ rights as victims of crime.  <i>(continued)</i>

<sup>96</sup> Constitution of Nepal (2015), Article 42(5).

<sup>97</sup> *Ibid.*

<sup>98</sup> UN Basic Guidelines, 8.

<sup>99</sup> Constitution of Nepal (2015), Article 21.

<i>Single Women</i>	Many conflict victims are single mothers and heads of household, some because they were widowed during the conflict and did not remarry, or were abandoned because of the violations they suffered. As such, many struggle to survive on inadequate means of support and are in need of specialized services to help them. Under the Constitution, they are eligible for livelihood assistance and for priority in employment based on skills, competency, and qualification. <sup>100</sup>
<i>Women Conflict Victims</i>	As provided under Article 51(j)(2), the state is required to make “women self-reliant who are vulnerable, victims of conflict, excluded by family and the society, by making necessary arrangements of rehabilitation, protection and empowerment for them.”
<i>Marginalized, Indigent or Economically Poor</i>	There are a number of provisions under the Constitution that apply to victims who are struggling economically. Conflict victims who are “economically very poor,” for instance, have the “right to special opportunity and facilities in the area of education, health, housing, employment, food and social security, for their protection, progress, empowerment and development.” <sup>101</sup> Similarly, indigent citizens have the right to special opportunities and benefits in education, health, housing, employment, food and social security for their protection, upliftment, empowerment, and development. Indigent citizens also may enjoy priority in relation to development projects. <sup>102</sup>
<i>Disabled</i>	Conflict victims with disabilities, as well as those who are economically indigent, have the right to get free higher education in accordance with law.
<i>Child Conflict Victims</i>	Child conflict victims are entitled “to special protection and facilities from the State.” <sup>103</sup> One category of conflict victims in need of services are children born as a result of conflict-related sexual violence. These individuals, many of whom have reached adulthood, may still be lacking official birth records and citizenship. <sup>104</sup>

## Local Government Operationalization Act

The Local Government Operationalization Act 2074 BS (2017 AD) was enacted by Parliament in October 2017. Its preamble spells out the legislation’s underlying aims: implementing the powers entrusted by the Constitution at the local level; promoting cooperation, coexistence, and coordination between and among the levels of government; providing accessible and quality services; ensuring public participation, accountability, and transparency; improving the local governance system by way of developing local leadership; and institutionalizing executive, legislative, and judicial practices at the local level.<sup>105</sup>

<sup>100</sup> Ibid., Articles 43 and 51(j).

<sup>101</sup> Ibid., Article 42(2).

<sup>102</sup> Ibid., Article 51(f)(6).

<sup>103</sup> Ibid., Article 39(g).

<sup>104</sup> For additional information about addressing the challenges this population of victims face, see Virginie Ladisch, [“From Rejection to Redress Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda”](#) (2015).

<sup>105</sup> Local Government Operationalization Act (2017), Preamble.

The act neither directly deals with any dimension of transitional justice, nor does it create any structure or mechanism linked to transitional justice. Rather, it delineates the structures, functions, duties, and powers of the local governments and their office holders, as well as administrative officials.<sup>106</sup> Many of the powers have clear implications for fulfilling victims’ rights under the Constitution and for implementing measures of reparation and reconciliation, including “compensation, facilities or concessions,” that could be recommended under the TRC Act. Key stakeholders confirmed this position during the interviews and coordination meetings conducted in preparation of this report.<sup>107</sup>

During those consultations, many stakeholders, for instance, expressed their belief that local governments can play a significant role within their jurisdictions to address victims’ socioeconomic grievances. They emphasized that constructive engagement is more likely with certain initiatives, e.g., creating local registries of victims, devising collective as well as individual reparation schemes, promoting memorialization initiatives, and fostering community reconciliation. Some of the stakeholders, however, remain skeptical about whether local governments will be able to remain nonpartisan and nondiscriminatory when making decisions or will instead apply selective criteria based, for instance, on ethnicity, caste, or political party, given the nature of partisan politics in Nepal and the experiences of many stakeholders during the IRP. Some interviewees see less of a potential role for local governments in terms of broader justice goals, such as truth-seeking and accountability.

With those insights in mind, the following specific powers can be and already are being applied to address victims’ reparative needs, including those of a legal, socioeconomic, and symbolic nature.

**Table 5: Relevant Provisions with Implications for Transitional Justice**

Local Power	Description
Cooperatives	Local governments are empowered to standardize and regulate cooperatives (community-based, member-run organizations), including those involved in agricultural activities. They can adopt measures that encourage the involvement of conflict victims in local cooperatives, give them priority in access to microcredits, and mobilize cooperatives to benefit conflict victims and foster an environment of social reconciliation. <sup>108</sup> Cooperatives may assist in the management of collective reparations measures, e.g., by providing access to capital, state land, and natural resources and pooled compensation funds. In some districts of Nepal, ex-combatants benefited from the use of this model by creating farming cooperatives to help overcome livelihood and security concerns. <sup>109</sup>

(continued)

<sup>106</sup> Ibid., Section 2.

<sup>107</sup> On November 29, 2017, JuRI-Nepal, ICTJ-Nepal, and CVCP co-organized a national-level consultation in Kathmandu with about 30 representatives from victims’ groups, civil society, human rights activists, and lawyers. The participants welcomed the opportunity to review the legal framework to explore the scope of local governments’ role in transitional justice and noted that some local governments have already undertaken initiatives to address victims’ concerns, including employment trainings, commemorations of particular days, the formation of women’s groups involving victims, and capacity building.

<sup>108</sup> Local Government Operationalization Act (2017), Section 11(2)(b).

<sup>109</sup> Bert Jenkins, D. B. Subedi, Kathy Jenkins (eds.), *Reconciliation in Conflict-Affected Communities: Practices and Insights from the Asia-Pacific* (Singapore: Springer, 2018), p. 214.

<p><i>Local level development plans and programs</i></p>	<p>Local governments are fully autonomous to devise development-related projects and to formulate and implement projects in relation to economic, social, cultural, environmental, technological, and infrastructure development. Such programs can include reparations programs of a collective nature and memorialization initiatives (e.g., naming streets in honor of victims or constructing or renovating schools and community buildings). When carrying out these developmental activities, the local government should take into account the needs of conflict victims within their respective jurisdiction and take steps to ensure their effective participation in the designing and implementation of these programs.<sup>110</sup> Care, however, should be taken to avoid equating development initiatives with reparations by ensuring that all local reparations measures for victims incorporate a strong symbolic component that acknowledges the violations and harms victims suffered.<sup>111</sup></p>
<p><i>Education</i></p>	<p>Local governments are empowered to formulate and enforce local laws, policies, and programs concerning basic and secondary education, special education and early child development, and informal education, as well as plans for technical and vocational training and alternative and community learning. They may also establish community, organizational, <i>guthi</i> (a private association), and cooperative schools. These powers have the potential to help conflict victims and their families, for instance, by providing victims who have aged out of primary and secondary education with alternative educational opportunities or by offering scholarships in their stead to victims’ children or grandchildren, such as those granted in an extension of Chile’s reparations program.<sup>112</sup></p> <p>In addition, as part of this function, local governments can also create village and municipal education committees and school management committees. These bodies may include conflict victims as representatives, promote memorialization initiatives, name schools after victims, or provide incentives and scholarship opportunities. Local governments can also engage students in extracurricular activities that familiarize students with the history and dynamics of the peace process.<sup>113</sup></p>
<p><i>Health and sanitation</i></p>	<p>The local government may consider adopting measures targeting conflict victims relating to basic and reproductive health, sanitation, and nutrition (e.g., psychosocial counseling and free health checkups and treatments). The municipalities and rural municipalities may establish hospitals and health institutions and establish programs for preventing and controlling malnutrition among children and women. Local governments also have a role in ensuring nondiscrimination in the delivery of services in the health sector, regardless of caste, ethnicity, gender, and disability, to help create a fairer society and mitigate societal conflicts.<sup>114</sup></p> <p style="text-align: right;"><i>(continued)</i></p>

110 Local Government Operationalization Act (2017), Section 11(2)(g).

111 Naomi Roht-Arriaza and Katharine Orlovsky, “A Complementary Relationship: Reparations and Development,” in *Transitional Justice and Development: Making Connection*, eds. Pablo de Greiff and Roger Duthie (New York: Social Science Research Council, 2009).

112 Lorena Escalona González, *Education as a Form of Reparation in Chile*, in *Transitional Justice and Education: Learning Peace* (Clara Ramírez-Barat and Roger Duthie, eds.) pp. 177-202 (2017).

113 Local Government Operationalization Act (2017), Section 11(2)(h).

114 *Ibid.*, Section 11(2)(i).

<i>Local records</i>	Local governments are responsible for creating and maintaining updated records in relation to demographic, natural, economic, social, cultural, and physical infrastructure; employment conditions; gross domestic product; per capita income; human development; and gender empowerment. <sup>115</sup> Consistent with this power, local governments may be able to create a local database of conflict victims. <sup>116</sup> They may also be able to establish a centralized unit where victims can access documentation or establish an archive of the conflict.
<i>Agriculture and livestock</i>	The agricultural and livestock sectors are also under the authority of local governments. Local governments are responsible for planning and creating policy, adopting measures to enhance the capacity of farmers, and promoting agricultural production, including promoting and marketing agricultural products. Within these functions, local governments may adopt measures to promote the interests of conflict victims who are engaged in the agricultural and livestock sectors, including providing technical support, capacity development, and empowerment measures for farmers. <sup>117</sup>
<i>Social security</i>	Municipalities and rural municipalities are entrusted with the responsibility to implement and manage social security programs, including updating the database of senior citizens, people with disabilities, and helpless people, and distributing identification cards and social security benefits. Local governments can establish day care and other facilities for elderly citizens, and manage rehabilitation centers for street children, orphans, and people with disabilities or psychosocial challenges. Conflict victims may be given priority in implementation of these provisions. <sup>118</sup>
<i>Unemployment</i>	Local governments update and maintain unemployment statistics. In addition, local governments can design and implement activities and trainings to address conflict victims’ unemployment challenges, and assist in creating employment opportunities, including providing financial literacy and skills training for those seeking foreign employment. <sup>119</sup>
<i>Sports</i>	The Local Government Operationalization Act empowers local governments to develop and promote the sports sector, including organizing local sports competitions. Such events may be considered a tool for promoting reconciliation at the community level, for instance, or for memorializing a particular victim or a group of victims. <sup>120</sup> They may also provide a means for intergenerational outreach and awareness raising. <sup>121</sup>

(continued)

115 Under the Birth, Death and Other Personal Events (Registration) Act, 2033 (1976), as amended, local officials have responsibilities for maintaining local registration books and for providing “necessary assistance” in registering personal events.

116 Local Government Operationalization Act (2017), Section 11(2)(f); 11(2)(m).

117 Ibid., Section 11(2)(o); 11(2)(r).

118 Ibid., Section 11(2)(p); 11(4)(f).

119 Ibid., Section 11(2)(q).

120 See Colombian Association for Research and Social Study of Sport, “Sport, Conflict, and Reconciliation: Exploring the Use of Sports for Peacebuilding and Conflict Resolution” Working Paper Series No. 1 (2012). Also, see Tom Woodhouse, “More than a Game: Sport and Conflict Resolution,” Peace in Progress Magazine (2016).

121 In Morocco, the community reparations program worked in partnership with the Ministry of Youth and Sports and the National Organization for Camps to run “Eyes to the Future” camps for young people that included a comprehensive program of activities involving entertaining educational activities and several activities on human rights in general and children’s rights in particular. Kingdom of Morocco National Human Rights Council, “Community Reparation: 900

<p><i>Poverty alleviation</i></p>	<p>Local governments are to play an important role in poverty alleviation. They should adopt plans, mobilize local resources, and work in collaboration with institutions at the national and provincial levels to alleviate poverty facing vulnerable groups. Local governments can also conduct household surveys (to determine who falls below the poverty line) and then manage the information obtained. As part of those responsibilities, the local level government can prioritize poverty issues and adopt special programs to promote the poor, vulnerable, and marginalized groups within their jurisdiction, including conflict victims.<sup>122</sup></p>
<p><i>Community development</i></p>	<p>The Local Government Operationalization Act entrusts ward committees with a significant number of functions, duties, and powers, including the formulation of ward-level plans. In that role, ward committees are bound to empower women, children, Dalits, people with disabilities, senior citizens, minorities, and marginalized communities, including by keeping their records. They are responsible for creating area reform institutions,<sup>123</sup> as well as for establishing, mobilizing, and monitoring them. The ward committees also have the power to carry out development activities that promote local festivals, language, and culture, including creating community learning centers, conducting nutrition and health-related awareness-raising programs, and carrying out drama and cultural programs and art exhibitions. The ward committee is also statutorily obligated to work toward ending certain traditional practices, such as child marriage, polygamy, gender-based violence, untouchability, dowry, <i>haliya</i> (bonded agricultural laborer), <i>chaupadi</i> (tradition restricting women from participating in certain activities during menstruation), <i>kamalari</i> (children sold as slaves to landlords by rural families who cannot pay rent), child labor, and human trafficking.<sup>124</sup> Ward committees may also take individuals who are sick and helpless to a nearby hospital or health center for medical treatment.<sup>125</sup></p> <p>Although many of the powers encompassed within this category are intended primarily to achieve humanitarian or development objectives, measures could be designed and implemented that serve both victims’ reparative needs and the needs of other persons in the community. When doing so, it is important to ensure that the measures incorporate the state’s recognition of its responsibilities for the causes and consequences of those violations and acknowledge the victims’ suffering.</p>
<p><i>Recommending power</i></p>	<p>The ward committee also has the power to recommend certain facilities (e.g., citizenship, confirming whether a person is alive, and transferring ownership of property) or services (e.g., free health treatment and a caretaker). The ward committee can also certify fundamental attributes of identity, such as birth and kinship, which could be important for some populations of victims such as children born of war. These functions could be used to support the work of the commissions and to assist conflict victims in obtaining documentation necessary to prove eligibility for and access to reparations benefits and other entitlements.<sup>126</sup></p>

Children in the ‘Eyes To The Future’ Camp” (2009), available at the website of the Kingdom of Morocco, National Human Rights Council.

122 Local Government Operationalization Act (2017), Section 11(4)(f).

123 These bodies cover a small geographic area or cluster of households, known as a tole.

124 Local Government Operationalization Act (2017), Article 11(2). See also Constitution of Nepal (2015), Article 51j(6).

125 Ibid., Article 12(c)(34).

126 Ibid., Section 12(2)(e).

<p>Development planning</p>	<p>Plans made by the local government should be compatible with the policy goals and objectives, timelines, and processes determined by the government of Nepal and the provincial government. Accordingly, local governments are required to pay attention to related matters, including economic development, poverty alleviation, good governance, gender equality, and social inclusion. When formulating plans, they must prioritize economic development and poverty alleviation; direct benefits to women, children, and backward classes; regions and communities; promotion of gender equality, social inclusion, social harmony, and unity; sustainable development; and culture. As part of that process, municipalities may engage with local academics, thematic experts, professionals, marginalized and endangered communities, women, children, Dalits, youths, minorities, people with disabilities, and senior citizens, when formulating local government plans. Victims’ groups should be consulted when designing and implementing these local-level development plans.<sup>127</sup></p>
<p>CSOs working with Local Governments</p>	<p>The Local Government Operationalization Act provides for collaboration between CSOs and local governments. Collaboration with CSOs should extend to initiating and implementing joint projects to support conflict victims. The act also provides a framework for how nongovernmental organizations (NGOs) should work at the local level. Under its provisions, NGOs, cooperative institutions, and other social and community organizations are required to coordinate with the local government, otherwise they cannot work within the local jurisdiction.<sup>128</sup></p>
<p>Judicial committees</p>	<p>The Local Government Operationalization Act has elaborated the jurisdiction of the local judicial committees under the Constitution, providing them with the mandate to mediate disputes in criminal cases for which no more than one-year imprisonment is prescribed. Local judicial committees exist in all 753 local bodies. In addition to adjudicating petty cases of a civil nature,<sup>129</sup> the judicial committee has jurisdiction to mediate certain disputes including physical assaults, defamation, looting, and encroachment and cultivation of other’s land.<sup>130</sup> Victims could benefit from access to judicial committees for the purpose of resolving outstanding questions relating to, for instance, the transfer of property registered in the name of someone who was disappeared or killed during the conflict.</p>

127 Ibid., Section 11, 12, 24.

128 Ibid., Section 15.

129 Ibid., Section 47.

130 Ibid., Section 46.



## Initiatives Already Underway at the Local Level

Most local governments consulted in preparation of this report responded positively to the idea of seeking and promoting a role for local government in moving forward transitional justice processes and in exploring ways to address victims’ needs and demands. This was particularly true of representatives who are themselves conflict victims and thus are dedicated to ensuring that victims’ issues are included in local plans, policies, and programs.<sup>131</sup> In the course of the discussions, local governments reported on a number of initiatives already underway in support of conflict victims in their jurisdictions. Although this listing is not comprehensive, it is useful to show steps that may be undertaken in the near term. With time and additional planning, much more can and should be done.

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“None of the political parties dealt with victims’ issues in the campaign. Those remarks touched my heart. It wasn’t in my election campaign. I completely forgot. In the coming days and if I get a chance to be a candidate again, we will incorporate the issues in our election campaign.”

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- **Including victim-focused programs and activities in municipal policy and action plans**
  - o Rajapur Municipality in Bardiya developed a policy and action plan after first consulting with victims that encompasses benefit programs targeting victims, including one for victims and single women. They are to receive 300,000 Nepalese rupees (USD 3,000). Also, the ward committees have been instructed to include victims as a main target group of all programs.
  - o In Bardiya, the representatives of Ward 6 in Geruwa Rural Municipality held a consultation with the Laliguras Conflict Victim Women Group,<sup>132</sup> in which they made commitments to provide victims with all available opportunities in the ward.
  - o In Dhanghadi, commitments were made to ensure that orphaned children of victims receive the orphan allowance and, if not, to consider a corrective change in policy.
- **Forming municipal-level conflict victim committees composed of victims from both sides of the conflict**
- **Raising awareness about victims’ needs, demands, and concerns**
  - o In Kailali District, officials have circulated photocopies of demand papers provided to them by victims and sent them to the 13 local bodies in Kailali District.
  - o In Dhangadhi, a Deputy Mayor, promised to include victims’ issues in upcoming elections. “None of the political parties dealt with victims’ issues in the campaign. Those remarks touched my heart. It wasn’t in my election campaign. I completely forgot. In the coming days and if I get a chance to be a candidate again, we will incorporate the issues in our election campaign.”
  - o Local officials have promised victims that they would include the issues of women victims in the agenda in future government meetings.

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<sup>131</sup> During the electoral campaign, some political parties included victims’ issues in their party platform, although that was not true for all. In addition, during consultations in January 2018, it became clear that some victims had difficulty seeking elected office because of the chronic health conditions they suffer.

<sup>132</sup> After the conflict, the Ministry of Women, Children & Social Welfare helped form this group of victims, made up of victims from both sides.





A visit to the Kumvar Adda Disappeared and Martyrs Memorial Park located in Barbardiya Municipality, Bardiya District. (ICTJ)

- **Making government offices more victim-friendly**
  - In Bardiya, a Tharu Help Desk has been established in the Ward Office to provide special services to victims.
- **Undertaking memorialization initiatives with local government funding, including public infrastructure projects** (e.g., naming roads after the disappeared), that incorporate symbolic reparations
  - A ward-level Committee of Martyr and Disappeared People’s Families has been formed in Ward 2 in Thakurbaba Municipality. All nine wards in Thakurbaba Municipality have decided to take symbolic steps when constructing roads and other public infrastructure in the memory of martyrs and disappeared people.
  - A road from Ranipur to Thanurdwara in Ward 2 was named after Martyr Keshar Basnet, who was abducted and later killed by the army. Additionally, a farmer’s group that registered with the District Agriculture Office in Ward 2 has been named the Aabisu Farmer Group,<sup>133</sup> in memory of three farmers killed during the conflict.
  - A consultant was hired in Bardiya to collect the biographies of the families of the disappeared for a book. The publication is intended as a long-term memorialization effort that is hoped to become part of a museum.
  - In Ward 10 in Bardiya, seven roads have been named after conflict victims, and 2 million Nepalese rupees (approximately USD 18,000) have been allocated for a Martyrs Park and for a statue at the Kumvar Adda Disappearance Park.
  - In Madi Municipality, the Municipal Council has so far allotted 50,000 Nepalese rupees (approximately USD 450) in the name of peace and construction. In

133 Aakash, Bikash, and Sudan were killed by the army during the conflict.

addition, though solely funded by the previous and current local government, the representatives enthusiastically referred to a number of local memorialization initiatives that have already been undertaken (e.g., Martyrs Park, Bandarmude Memorial,<sup>134</sup> Martyr Statue,<sup>135</sup> and a bus stop waiting shed).

- **Including victims as a priority group in education and health policies**
  - o The Mayor and Deputy Mayor of Thakurbaba Municipality declared that they would include victims in the education and health policies under development.
  - o According to the Chairman of Ward 10 in Bardiya, a percentage of any employment or skill-based training provided to the citizens is going to be directed to conflict victims. His municipality has agreed to prioritize education instead of development and to include victims as a priority target group.
  - o In Madi Municipality in Chitwan District, planning has not progressed quite as far, as the municipality was still preparing and finalizing the database of its population and thus could not plan for allotting budgets to each category of the population. However, officials in Madi (elected representatives and staff) likewise believe they can play a proactive role. As stated by the Executive Officer of the Municipality, “A separate committee can be formed under the executive authority of the local government. There could be a local initiative toward helping out the victims in terms of education, agriculture and livestock, skills development.”
  - o In Dhangadhi, local officials have made a commitment to conduct free trainings and preparation classes so that victims will be able to compete for jobs in government agencies such as the Public Service Commission.

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134 The memorial contains the names of the almost 40 people killed and 75 injured in the bus bombing. According to those victims consulted, the Local Peace Committee had prepared a plan and submitted it to the MoPR. That plan had called for building a historical museum on the land near the memorial. The ministry has not yet moved the plan forward.

135 This statue was constructed in Basantapur Bazar, Madi, as a memorial to four Maoist cadres killed by security forces.

## 4. Engaging with Existing Transitional Justice Mechanisms

### Framework for Transitional Justice

In 2014, Nepal’s parliament, the Constituent Assembly (CA), enacted the TRC Act, providing a legal framework for transitional justice in Nepal. Under the TRC Act, two commissions—the TRC and the CIEDP—were created.<sup>136</sup>

Because the TRC Act dates from before the 2015 Constitution and does not mention or reflect the new federalist structure, the transitional justice agenda, including the work of the two commissions, has largely been driven by policy and funding decisions made at the center in Kathmandu, where the headquarters of both the TRC and CIEDP are located. Only recently, in June 2017, did the TRC start opening offices at the Office of the Attorney General in each province to conduct investigations and to map complaints at the provincial level.<sup>137</sup> Yet that outreach effort has been limited,<sup>138</sup> and it has involved primarily the collection of victim statements and the initiation of investigations.<sup>139</sup>



Victims present the Women Victims of Conflict Justice Manifesto to TRC Commissioner Ms. Manchala Kumari Jha (left) at the National Interactive Dialogue in Kathmandu on June 28, 2018. (ICTJ)

As such, it has not involved much interaction between the TRC and local governments. Thus, there has not been much opportunity for local governments to explore areas of overlap between their powers and the operations of the transitional bodies, and to consider what role they might play under the new Constitution and the TRC Act to move forward components of the transitional justice agenda.

With the recent extension of the commissions’ mandate,<sup>140</sup> it is important to consider (1) how local governments may be called upon to support the commissions, including carrying out recommendations issued by the commissions at the conclusion of their mandates, and (2) what local governments may do in the meantime, consistent with their powers and the TRC Act, to address victims’ rights to truth, justice, and accountability, including implementing individual and collective reparations measures to provide redress to victims for the harms they suffered during the conflict.

<sup>136</sup> At the conclusion of the initial two-year tenure of the TRC and the CIEDP, the government of Nepal extended the tenure of both commissions for an additional one-year period in January 2018.

<sup>137</sup> The Kathmandu Post, “[TRC Opens Offices in Seven Provinces, Members to Lead.](#)”

<sup>138</sup> Information shared by TRC Commissioners; The Himalayan Times, “[TRC Mapping Extended Offices in Provinces.](#)”

<sup>139</sup> Republica News, “[TRC Begins Probe into War-Era Cases from Surkhet.](#)”

<sup>140</sup> Ordinance dated April 25, 2018.

## Federalism and the TRC Act

The 2015 Constitution guarantees that “acts relating to peace process under the Interim Constitution of Nepal, 2007 (2063) shall be deemed to have been done under this Constitution.”<sup>141</sup> Therefore, the transitional justice framework established by the TRC Act remains in full force. Local governments surely have a role to play in facilitating and implementing recommendations and decisions of the commissions.

Although the TRC Act does not establish a formal connection between the commissions and local governments, it does require the action and cooperation of the local governments in their operations. For instance, the TRC Act requires local governments to engage in transitional justice processes and to support the commissions in achieving their mandated objectives by providing information, producing documents or evidence, and assisting in searches and other actions required in the course of the commissions’ investigations.<sup>142</sup> If these duties are breached, the commissions may impose a fine of up to 15,000 Nepalese Rupees (USD 150), or, in the case of noncompliance by any government authority, the commissions may seek departmental action against the duty bearer.<sup>143</sup>

The commissions can also seek assistance from local governments in connection with the holding of public hearings,<sup>144</sup> in offering protection for victims and witnesses and in carrying out activities to bring about reconciliation.<sup>145</sup>

And under Section 28 of the TRC Act,<sup>146</sup> if and when the commissions make recommendations to the government of Nepal for reparations, reconciliation, institutional reforms, guarantees of non-repetition, or addressing the root causes of the conflict, local government will certainly have a role to play in administering and implementing those recommendations. In fact, the TRC Act authorizes the MoPR—the primary implementing body under the TRC Act for providing compensation, restitution, and rehabilitation, including facilities and concessions once the commissions issue recommendations for reparations—to call upon government to implement the commissions’ recommendations. It stipulates that, “The Ministry shall itself implement, or cause to be implemented through the concerned authority, the recommendations [of the commissions] upon obtaining approval of the Government of Nepal.”<sup>147</sup>

Many of the commissions’ recommendations for reparations are likely to implicate and require action by local governments using the powers and jurisdictions granted to them (summarized in Table 5), over education, medical treatment, skills-oriented training, loan facilities, and employment.<sup>148</sup> Proposed amendments to the TRC Act provide additional authority for collaboration between the commissions and local and provincial governments.<sup>149</sup>

141 Constitution of Nepal (2015), Article 304 (2).

142 TRC Act, Sections 15 and 37.

143 Ibid., Section 15.

144 Ibid., Section 6.

145 Ibid., Section 22(4) “(a) To organize reconciliation functions at the sites of the armed conflict by involving the perpetrator, victim and his/her family, (b) To cause to be constructed statues, public places or monuments in commemoration of the deceased in the course of armed conflict by involving the perpetrator, victim and his/her family, (c) To cause to be published various articles, literary works, essays, songs, pictures, etc. concerning reconciliation, (d) To enhance social and communal good faith, (e) To carry out other appropriate acts.”

146 Ibid., Section 23(1) “Upon completion of an investigation under this Act, the Commission shall make recommendation to the Government of Nepal to provide compensation to the victim, to make restitution or to rehabilitate or to make other appropriate arrangement. (2) Notwithstanding, anything contained in sub-section (1), the Commission may, if it considers appropriate, make recommendation to the Government of Nepal to provide the following facility and concessions to the victim or any member of his/her family as per his/her condition: (a) Free education and medical treatment, (b) Skill oriented training, (c) Loan facilities without interest or with concessionary interest, (d) Arrangement for settlement, (e) Facility of employment, (f) Other facility or concession as the Commission deems appropriate.”

147 Ibid., Section 28(2)(a).

148 Ibid., Section 23(2)(a)-(f).

149 Proposed TRC Amendment 23(7) stipulates: “Collaboration may be done, as necessary, with provincial government, local level, community-based organizations, organizations established by victims and private sector while providing reparation pursuant to this section.” Unofficial Translation VI, June 26, 2018.

However, local governments need not necessarily wait on the commissions’ recommendations before acting but may act now consistent with their powers. In fact, the national government is already allocating monies to allow for local governments to undertake initiatives on behalf of victims. During a public event in Kathmandu on May 15, 2018, the Attorney General made a statement, saying that “the government is planning to provide 90 million Nepalese Rupees [approximately USD 810,000] budget to the local level. With the allocation of large amount of budget to the local level, they [the local government] have also been made responsible for addressing war victims’ problems at the local level.”



## 5. Experiences and Potential Challenges

During consultations conducted in preparation of this report, local government officials and other stakeholders reported on their current experiences working on transitional justice issues at the local level and identified the following challenges they are facing:

- **Need for greater clarity on the intersection between local powers and existing transitional justice mechanisms.** Some local officials expressed dissatisfaction that the Local Government Operationalization Act does not include a provision clarifying their role in addressing transitional justice issues relating to the conflict.
- **Lack of disaggregated data.** Stakeholders complained that there is no easily accessible, up-to-date information about individual conflict victims, their needs, socioeconomic status, and representation in state institutions. This is especially true for victims of sexual and gender-based violence who are less likely to come forward due to stigma and confidentiality issues. To address this gap in information, it was suggested that assessments should be conducted of victims’ basic needs to help governments set priorities over the short-, medium-, and long-term after additional consultation.
- **Lack of guidance from the central government and insufficient time for preparation.** Local officials expressed frustration with their lack of time for internal discussions and for reviewing, voting upon, and implementing policies and laws, including budget proposals and allocations. Without more time for reflection, some officials are finding it difficult to make the types of informed decisions, especially when preparing budgets, that could help victims, particularly those who are most vulnerable and in need of immediate help. Advanced planning in connection with this year’s local-level policy and action plans, for instance, might have encouraged the inclusion of more victim-centered policies.
- **Challenges meeting victims’ high expectations and working with victims from both sides.** Local officials discussed the difficulties they face, given victims’ earlier experiences with unmet expectations and desire for quick action now, more than 10 years after the war ended. Another challenge is how to work with victims from both sides on an equal footing. There are cases in which there are many more victims from one side than the other and, as a result, there is increased pressure to satisfy the former over the latter.
- **Need for capacity building.** Stakeholders across sectors reported a need for capacity building, so that they can better understand the role they can play in addressing victims’ needs and in advancing transitional justice issues. This should include more frequent communication from the central government about policy changes and initiatives and basic help with skills such as planning, proposal writing, and evidence-based advocacy. It should also include technical support on what and how reparations can be implemented.
- **Avoiding politicization of the process.** Some local officials are facing challenges implementing policies involving victims on both sides of the conflict equally. This was also true for officials who are themselves conflict victims and who have at times found it difficult to balance their roles as elected representatives responsible for treating all their constituents equally and being true to their status as conflict victims. Some, for instance, have been criticized by victims for not doing enough for them, quickly enough. To address such tensions, some of these representatives have asked for

sensitivity trainings on how to communicate effectively that they are not pitting one group against another but are serving both groups as a representative of government and as an advocate for victims’ rights and needs. These tensions sometimes extend to local commemoration activities, which can appear one sided and politically motivated.<sup>150</sup> Steps need to be taken to mitigate these challenges.

- **Assessing victims’ needs for services and the available capacity for meeting those needs.** Local governments will need to assess victims’ needs for services, including medical services, and the available capacity for meeting them, locally and nationally. Because some victims need specialized services, it will be important to consult broadly with medical doctors and mental health providers at the provincial level and in Kathmandu about accessing services there. In remote parts of Nepal, efforts might be undertaken to arrange for mobile clinics, such as those deployed in other contexts to provide medical support to victims in marginalized communities.<sup>151</sup> Home visits such as these might be preferred by some victims, especially those seeking greater privacy or extra assurances of confidentiality.
- **Establishing effective outreach mechanisms.** There are many potential obstacles to reaching victim populations, e.g., illiteracy, remoteness, and lack of resources. To overcome these challenges, it is important to begin immediately to develop a communications strategy for getting the word out to victim populations about how they can seek assistance and learn about benefits once they are available.<sup>152</sup> There are of course many ways to disseminate information (in print, online, by word-of-mouth, during community meetings, via radio, and during cultural activities).<sup>153</sup> Ultimately, context will determine which approaches are most effective and feasible, although diverse approaches are strongly recommended.
- **Determining eligibility for benefits.** Many victims face difficulties establishing their status as victims and thus their eligibility for benefits. Some have been turned away by officials or service providers because they do not have documentation or evidence of the violations they suffered. In some instances, tangible evidence never existed; in others, over the years, it was destroyed or lost. Some victims already provided whatever documentation they had to the government in connection with the IRP or when filing complaints with the commissions, but it was not returned. Given those facts, it should be sufficient for purposes of reparations for victims to submit a statement to the commissions, or for victims of sexual violence to provide a statement in confidence, to be eligible for benefits.
- **Ensuring local initiatives are meaningful and have a reparative impact.** Local initiatives commonly aim to achieve objectives related to development, poverty reduction, and stabilization and are not designed to have a reparative impact. To be truly meaningful and reparative, local initiatives will need to be sensitive to both the material and moral needs of survivors and victims and should incorporate an unequivocal message that society recognizes that violations occurred and that victims suffered consequences as a result.

150 For instance, in Bardiya district, the local government constructed a road in commemoration of five teachers of one political affiliation who disappeared during the conflict. Nothing was done for others similarly situated.

151 Kingdom of Morocco National Human Rights Council, “Community Reparation: Organization of Medical Caravan In Anergui Commune-Province Of Azilal” (2011), available at the website of the Kingdom of Morocco National Human Rights Council.

152 Clara Ramirez-Barat, “Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice,” ICTJ (2011).

153 ICTJ’s implementing partner Equal Access Nepal has been broadcasting via radio to victim communities about reparations and transitional justice. For additional information, see the Equal Access [website](#).



- **Ensuring that gender-sensitive approaches are taken.** During consultations conducted in preparation of this report, a number of stakeholders mentioned the need for additional capacity building on gender-sensitive approaches, among other things, to help improve opportunities for women to serve in government and in leadership roles in local organizations.<sup>154</sup>

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<sup>154</sup> In some places, women representatives of government and civil society felt they were not being heard or were being discriminated against including when visiting government offices, such as the police.

## 6. Conclusion

Nepal’s new federal structure presents new opportunities for all levels of government in the country to renew their commitment to advancing the aims of transitional justice by acknowledging the human rights violations committed during the conflict; providing redress to victims, their families, and communities; and facilitating operations at the two commissions, the TRC and the CIEDP.

In the absence of a national reparations policy, local responses can address some of victims’ needs. However, continued coordination between and among the different levels of government will be essential if these efforts are to be meaningful and equitable. In addition, it will be important to solicit input about what is needed and what is likely to be effective by consulting with victims’ groups, civil society organizations, and others who work to defend and advance the cause of human rights in Nepal. For all policies, monitoring and evaluation during implementation will also be essential.

Because reparations measures often overlap in many areas with local programs for reducing poverty and unemployment and improving access to resources such as land, local governments will need to be vigilant in ensuring that acknowledgment and other components of reparations are not overlooked when benefits are dispensed. The distinction between reparations and development assistance is particularly important in the local context. Conflict victims should be recognized and acknowledged for the harms they suffered whenever possible, especially when addressing the consequences of those violations.

## 7. Recommendations

### *For local governments*

Local governments have a significant role to play in implementing reparative measures; promoting reconciliation; and promoting a culture of peace, human rights, and justice in Nepal. The Constitution and existing laws empower them to adopt and implement a range of material and symbolic measures for addressing the harms that victims, their families, and communities suffered. Consistent with these powers, it is recommended that local governments consider taking the following steps to advance victims’ right to truth, justice, and accountability:

- 1. Conduct a comprehensive assessment of conflict victims’ needs.** Local governments should identify conflict victims within their jurisdiction, assessing their needs, disabilities, and experiences of harm, and create a victims’ registry and database. Based on these assessments, local governments may then develop programs for addressing those needs in a comprehensive way, consistent with their powers, functions, and jurisdiction. Conflict victims in need of urgent measures (for instance, medical treatment for injuries and wounds) need not wait on the full and comprehensive assessment but may receive measures on an expedited basis.
- 2. Develop policies and plans for providing reparations as a right to victims.** Local governments should collaborate with each other and with officials at the provincial and national levels when developing and implementing reparative measures, including initiatives for memorializing victims and promoting reconciliation. They should also consult available databases housed in other agencies of the government, as well as with independent bodies such as the NHRC and nongovernment sources, that may have information about victims, their experiences during the conflict, and needs. Bodies such as the MoPR and the International Committee of the Red Cross would likely possess particularly pertinent data about conflict-affected populations.
- 3. Ensure meaningful participation and consultation with conflict victims when developing programs and policies and formulating local laws that have implications for victims.** During the planning process, time should be allowed for soliciting input from and consulting with conflict victims. Victims’ groups should be included and represented in committees, sub-committees, or any other mechanisms created by the local government for this purpose. In addition, local governments should consider creating conflict victims’ committees within the ward, at the municipality level, or both, or including victims’ representatives in existing thematic committees.
- 4. Earmark funds for victim reparation measures.** Consideration should be given to creating a separate budget heading for “conflict victims” and allocating monies annually to support initiatives that directly benefit victims and promote a culture of peace, justice, reconciliation, and human rights. It is also recommended that local government together with the national and provincial governments develop multiyear strategic plans for developing, implementing, monitoring, and evaluating plans. Such plans can help ensure reparations measures are fiscally sustainable, meet available budgetary and resource allocations, are timely, and are consistent with other priorities and budget commitments.
- 5. Establish reparative measures** in consultation with relevant stakeholders including victims’ groups in their respective jurisdiction. These measures should be structured to provide vulnerable victims in urgent need of reparations with immediate assistance as well as include longer-term and more comprehensive measures. These measures could include the following:

- a) Promoting cooperatives created and operated by conflict victims
  - b) Mobilizing and developing local cooperatives to benefit conflict victims
  - c) Adopting measures to encourage entrepreneurship, self-employment initiatives, and income-generation activities involving conflict victims
  - d) Establishing microcredit facilities for conflict victims
  - e) Implementing measures to facilitate access to education for conflict victims and their children, including scholarships, education, and vocational training opportunities
  - f) Opening, reestablishing, or upgrading schools and health centers to benefit conflict-affected populations
  - g) Naming schools, roads, and local infrastructure in honor of the victims of human rights violations
  - h) Prioritizing special incentives for victims engaged or starting projects in the agriculture and livestock sectors
  - i) Devising and implementing health-related measures for victims, including psychosocial counseling, emotional support, free health checkups and treatments, free or low-cost medications, and nutritional support
  - j) Devising and implementing social protection measures (e.g., care centers and in-home assistance) for those victims who are living in extreme poverty and who are disabled, elderly, or helpless
  - k) Ensuring that government at all levels, including at the provincial and national levels, develop processes that allow victims to access reparative measures easily and promptly
  - l) Designing and implementing measures to promote a culture of peace, social reconciliation, harmony, and cohesion, including in relation to sports, arts, and literature
6. **Ensure that nondiscrimination and no harm principles for victims are fully observed when formulating and implementing local laws, policies, and programs, and delivering services.** Local governments may adopt and implement their own strategic plans for combating long-standing discriminatory, exploitative, and harmful practices based on gender, caste, marital status, religion, culture, and tradition.
  7. **Consider creating a special committee or mechanism within the local judicial committee with the responsibility to look after local issues having direct or indirect implications for human rights, transitional justice, and peace.** In addition to adjudication and mediation functions, the local judicial committee could be entrusted with a promotional role in terms of justice, human rights, and peace.
  8. **Support transitional justice processes, including by sharing information and providing recommendations to the TRC and CIEDP.** The local government should consider designating a transitional justice focal point, creating guidelines or operational policies that will better guide the local government authorities in carrying out these functions effectively.
  9. **Conduct oversight, monitoring, evaluations, and periodic assessments of justice-related processes,** consistent with the provisions of the Local Government Operationalization Act 2074 BS (2017).

*For the national government*

1. **Amend laws to ensure consistency with the Constitution.** In view of responsibility of each level of government to respect, protect, and fulfill fundamental rights and human rights, the law operationalizing and governing the NHRC needs to be amended so that the NHRC can directly recommend measures to local governments in terms of prompting human rights and addressing the needs of the conflict victims at the local level.
2. **Amend transitional justice legislation** to explicitly empower the TRC and CIEDP, among other things, make recommendations to local governments for designing and implementing reparations, creating a conducive environment for victims, protecting witnesses and the confidentiality of victim information, facilitating access to transitional justice processes for conflict victims, promoting reconciliation, and introducing vetting and institutional reform measures
3. **Conduct consultations on any proposed amendments to the TRC Act 2014 and trainings on any amendments if and when they are finalized.** The trainings should be conducted in the localities and include not only elected officials but also staff. Separate sessions should also be held for heads of victim organizations and civil society.
4. **Provide guidance and capacity building to local governments on justice issues,** including Mayors, Deputy Mayors, Ward Chairs, and Ward Members.
5. **Improve the capacity of governmental bodies at all levels to conduct oversight and prevent corruption** in the dispersal of reparations benefits and in the implementation of reparations policies.

*For civil society*

1. **Monitor local government initiatives on behalf of conflict victims.** Create watchdog groups to monitor implementation of reparations for victims, keep victims' organizations abreast of developments, and take action in support of implementation in the event nothing is done. They could also report to media outlets and act as a fact-checking mechanism for society, protecting victims and the public from misinformation.
2. **Bar associations should provide free legal support to conflict victims.** Underprivileged conflict victims should be given free legal aid through the Nepal Bar Association in their respective localities.

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