

Intersections between Corruption, Human Rights and Women, Peace and Security: Nepal Case Study

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The Case Study was developed in October-December 2019, and thus reflects the reality from before the global outbreak of the COVID-19 pandemic. However, due to their long-term nature, the key findings and recommendations remain relevant and take on a renewed urgency in the current context.

List of Acronyms

CIAA	The Commission for the Investigation of Abuse of Authority
CIEDP	Commission of Investigation on Enforced Disappeared Persons
CPA	Comprehensive Peace Agreement
CRSV	Conflict Related Sexual Violence
CSO	Civil Society Organization
FGD	Focus Group Discussion
GBV	Gender-Based Violence
GNWP	The Global Network of Women Peacebuilders
GoN	Government of Nepal
HR	Human Rights
IEP	Institute for Economics and Peace
INGO	International Non-Governmental Organization
KII	Key informant interview
NAP	National Action Plan
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
NWC	National Women Commission
SGBV	Sexual and gender-based violence
TJ	Transitional Justice
TRC	The Truth and Reconciliation Commission
UN	United Nations
UNSCR	United Nations Security Council Resolution
WPS	Women, Peace and Security

Executive summary

While there is no internationally agreed definition of corruption, Transparency International defines corruption as “the abuse of entrusted power for private gain”.¹ Corruption is an abuse of trust, power or position for improper gain. Cultural factors – such as social acceptance of corruption and strong emphasis of on wealth as a sign of status – play an important role in fueling and shaping the scale and nature of corruption in each specific context.² At the same time, corruption is also closely linked to the lack of transparency and accountability. It is often rooted in lack of effective accountability and oversight mechanisms and non-transparent systems and processes.³ Transparency and accountability are critical elements necessary to ensure timely and adequate delivery of justice, reparations and necessary services to victims of conflict, including survivors of conflict-related sexual violence (CRSV). The lack of transparency and accountability in a government has serious impacts on people’s lives in all societies. However, the impact in conflict-affected countries is often more damaging because social institutions and governance structures are still unstable and fragile. However, most analyses of the impacts of lack of transparency and accountability, including corruption, are conflict-blind and gender-blind.

Transparency and accountability are critical elements necessary to ensure timely and adequate delivery of justice, reparations and necessary services to victims of conflict

Nepal ranks as 113th out of 198 countries in the Corruption Perceptions Index, with little change in its rating in the past decade. This indicates that the problem of lack of transparency and accountability should be of considerable concern in the country. Despite this, no gender-sensitive nor conflict-sensitive analyses of transparency and accountability in post-conflict processes and institutions were identified. This report presents findings of a research that set out to address this gap by investigating linkages between transparency and accountability mechanisms (or lack thereof) in the post-conflict processes in Nepal, human rights, and the Women, Peace and Security (WPS) agenda.

The research used a qualitative analysis in order to (i) understand the linkages between Human Rights, WPS and existing transparency and accountability mechanisms (or lack thereof) in the implementation efforts to address these issues; and (ii) solicit the views of survivors of sexual and gender-based violence (SGBV) as well as the government, civil society regarding factors that prevent survivors from accessing justice.

The research suggests that there is very limited transparency and accountability in post-conflict processes in Nepal, including the transitional justice and reparation processes. While the research sample for this study was limited, the in-depth interviews have pointed to some important trends and tendencies. The findings underscore that the lack of transparency and accountability are not a matter of an absence of policies or monitoring bodies – but rather the failure to implement and a politicization of the post-conflict processes. The research clearly establishes that lack of transparency and accountability significantly affects victims’ access to justice and relief and recovery services; as well as women’s ability to meaningfully participate in decision-making. Lack of transparency in processes and mechanisms for reporting SGBV, as well as a failure to adopt confidential, secure, victim-friendly reporting mechanisms exacerbate the

¹ Please see: <https://www.transparency.org/what-is-corruption#define>

² Mandy Moody, “Fighting the Root Causes of Corruption”, 5 April 2020. Retrieved on October 30, 2020 from: <https://www.fraudconferencenews.com/home/2019/4/5/fighting-the-root-causes-of-corruption>

³ UN Office of Drugs and Crime, “Accountability and the Prevention of Corruption”, 2020. Retrieved on October 30, 2020 from: https://www.unodc.org/documents/Advocacy-Section/COVID-19_and_Anti-Corruption-2.pdf

absence of trust. Consequently, victims are unable to access justice, reparations and other basic services, and their insecurity is increasing. For CRSV survivors, this is aggravated by social stigma and the absence of family and community support.

Further, due to the patriarchal nature of the Nepali society, corruption and lack of accountability reinforce male privilege and make women more vulnerable. This not only violates women's human rights, but also affects their security, as victims, survivors and witnesses face further threat from State, political parties, society and even their own family members. Systematic discrimination against women, and victims and survivors of violence is inevitably perpetuated by non-transparency and non-accountability in government institutions mandated to address CRSV.

In order to safeguard women's human rights, there is a need to strengthen the efforts to guarantee transparency and accountability, which will foster people's trust towards the system.

1.0 Background and rationale

1.1. Transparency, accountability and human rights in an aftermath of conflict

The literature on the linkages between the absence of transparency and accountability and human rights has been growing. It has been established that lack of transparency, including corruption as its most extreme form, makes it impossible for States to comply with their human rights obligations.⁴

In the aftermath of conflict, ensuring full transparency of post-conflict processes is critical. Lack of transparency can lead to an inability to protect human rights of the citizens, as well as to effectively address and remedy human rights violations that took place during conflict. However, much of the analysis of the interlinkages between transparency and human rights remains conflict-blind, and does not analyze how the impacts of the lack of transparency and accountability are different in conflict-affected contexts. Furthermore, most analyses of the linkages between the lack of transparency and accountability, human rights and peace do not apply a gender lens.

In the context of Nepal, transparency and accountability are critical elements necessary to ensure timely and adequate delivery of justice, reparations and necessary services to victims of conflict, including victims of conflict-related sexual violence. Yet, there have been no conflict-sensitive and gender-sensitive analyses of the transparency and accountability in post-conflict processes and institutions in Nepal.

This report presents findings of a research that set out to address this gap, by investigating the linkages between transparency and accountability mechanisms (or lack thereof) in the post-conflict processes in Nepal, human rights, and the Women, Peace and Security (WPS) agenda.

For the purposes of this research, transparency, accountability and corruption have been defined as per the Transparency International definitions. Transparency

⁴ Statements by the Committee on Economic, Social and Cultural Rights by the Covenant (ICESCR) (CESCR, 2003, Para.12); Committee on the Rights of the Child CRC/C/COG/CO/1 Para.14; Statement by the UN Special Rapporteur on Independence of Judges and Lawyers in E/CN.4/2006/52/Add.4. Para.96.

is defined as “shedding light on shady deals, weak enforcement of rules and other illicit practices that undermine good governments, ethical businesses and society at large”⁵, while accountability is defined as “the concept that individuals, agencies and organizations (public, private and civil society) are held responsible for reporting their activities and executing their powers properly. It also includes the responsibility for money or other entrusted property.”⁶ Corruption is the “abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.”⁷

1.2. Transparency and accountability and the Women, Peace and Security agenda

In a post-conflict context, lack of transparency is a major obstacle in building sustainable peace. It prevents the government from efficiently addressing the post-conflict needs of its citizens, as well as tackling the root causes of conflict.

Transparency in the judiciary and transitional justice institutions is particularly important. Research by the Institute for Economics and Peace has shown that “higher levels of corruption within the police and judiciary create inefficiencies by disabling sound legal frameworks and formal and informal codes of conduct. This leads to increased levels of crime and violence within society.”⁸ In a post-conflict context, lack of transparency and accountability, or corruption in a judiciary system has an added impact of making victims’ access to justice more difficult. Even if corruption does not occur, perceived corruption or lack of transparency and accountability mechanisms may lead to a distrust from victims and communities and unwillingness to share their experience with the transitional justice bodies, as discussed in more detail below.

Impacts of lack of transparency and accountability in post-conflict settings are different for women and men, given the different gender norms they face, and their distinct experiences of conflict. The United Nations Security Council Resolution (UNSCR) 1325 on WPS, unanimously adopted on October 31, 2000, acknowledges the differential and sometimes unique impact of armed conflict on women. The resolution calls for the integration of gender perspective in negotiating and implementing peace agreements, including through addressing “the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction.”⁹ It also calls for “Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.”¹⁰ Addressing women’s particular needs in conflict and protecting their human rights requires full transparency and accountability, especially given the growing evidence that women tend to be more vulnerable to corruption in non-transparent systems.¹¹

5 Transparency International, “What is corruption?”. Retrieved on October 30, 2020 from: <https://www.transparency.org/what-is-corruption>

6 Transparency International, “Accountability”. Retrieved on October 30, 2020 from: <https://www.transparency.org/glossary/term/accountability>

7 Transparency International, “What is corruption?”. Retrieved on October 30, 2020 from: <https://www.transparency.org/what-is-corruption>

8 Ibid.

9 S/Res/1325 (2000), OP 8. Available at: <https://www.un.org/ruleoflaw/blog/document/security-council-resolution-1325-2000-on-women-and-peace-and-security/>.

10 Ibid.

11 See, for example: UNDP and UNIFEM, “Corruption, Accountability and Gender: Understanding the Connections”, 2010. Retrieved on 24 April 2019 from: <https://www.undp.org/content/dam/aplps/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf>

UNSCR 1325 and the nine subsequent WPS resolutions constitute a normative framework for women's meaningful participation at all levels of decision-making. They reaffirm the key role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction, and stress the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. The WPS agenda also urges all parties to ensure that women have access to justice and services during conflict as well as in undertaking relief and recovery efforts.

The WPS agenda is commonly conceptualized as having 4 main pillars: Participation, Prevention, Protection and Relief and Recovery. As discussed in-depth in the further sections of this report, lack of transparency and accountability constitutes a major obstacle to the implementation of all four pillars.

1.3. Gender and conflict in Nepal

The 10-year civil war between Maoist fighters and the Nepal's monarchical government, between 1996 to 2006, is estimated to have claimed over 17,000 deaths of women and men¹², and displaced 100,000 to 150,000 people nationwide.¹³ The conflict came to an end in June 2006, when the seven political parties and the Maoist Communist Party of Nepal signed an eight-point agreement, which was followed by the signing of the Comprehensive Peace Agreement (CPA) on 21 November 2006. Yet, like many post-conflict countries, Nepal continued to be beset by ethnic, political, social and religious rifts during the transition period.

Women and girls suffered disproportionately through the conflict. Many women and girls joined the Maoist Army as combatants – an estimated 20 percent of combatants in the Maoist Army were women.¹⁴ Women also performed support functions, facilitating logistics, delivering supplies, cooking food, washing clothes etc. Many of the former women combatants face challenges with reintegration in the society, and gaining acceptance of their families and communities.¹⁵ There have been reports that women combatants were sexually and physically abused by fellow party members.¹⁶ Unwanted pregnancies and children born of rape during the conflict resulted in women being stigmatized and disowned by their own families and in-laws. The obligation to raise the child alone as well as the medical costs of seeking abortion added to women's economically vulnerable status.¹⁷ The reversal of traditional roles also increased the number of female-headed households, maintained by socially stigmatized and financially abandoned single mothers.¹⁸ This has increased the economic burden and vulnerability of women post-conflict. Due to the death or displacement of primary financial providers (men), children, especially girls, were forced to quit school due to unaffordability. Women, in addition to their role as caregivers, were also forced to take on the part of breadwinners.

12 See: http://www.nepalmonitor.com/2011/07/recording_nepalconf.html

13 Shrestha, Bandana, and Som Niroula, "Internally displaced persons in Nepal", *Peace and Democracy in South Asia*, Volume 1, Issue 2, 2005.

14 Thapa, Lily, and Deon V. Canyon, "The Advancement of Women in Post-Conflict Nepal", *Asia-Pacific Center for Security Studies Honolulu United States*, 2017, p.2. Available at: <http://apcss.org/wp-content/uploads/2010/03/17-Thapa-The-advancement-of-women-in-post-conflict-Nepal.pdf>

15 See: <http://www.irinnews.org/report/88806/nepal-reintegration-challenges-maoist-female-ex-combatants>

16 See, for example, <https://www.hrw.org/report/2014/09/23/silenced-and-forgotten/survivors-nepals-conflict-era-sexual-violence>

17 Ibid.

18 ICTJ Nepal. "The Impact of Nepal's Conflict on Women" (2010).

“Women were raped and tortured... to destroy communities both morally and physically”

A woman interviewed during the research

Women and children are estimated to account for approximately 80% of those who were internally displaced during Nepal's conflict.¹⁹ As a result, they were made easy targets for sexual exploitation and trafficking. This continued post-conflict when the weak socioeconomic status of women continued to expose them to trafficking. While there is no adequate data on the scale of human trafficking, anecdotal evidence indicates that the number of women working as sex workers and dancers in dance bars in Kathmandu and the Nepali border area has increased post-conflict.²⁰

While it is impossible to get an accurate estimate on the number of women who were victims of SGBV during conflict due to the underreporting linked to the stigma that surrounds it, it is clear that many women continue to suffer from physical and mental health problems due to violence and trauma experienced during conflict. As stated by one of the women interviewed for this research, 'Women were raped and tortured ...to destroy communities both morally and physically, to spread fear and terror, and reconfirm military masculinities by both the warring parties. After the conflict has ended, they were further rejected by their spouses, and family members, who considered them as characterless and unfaithful to their husbands.'²¹ The Truth and Reconciliation Commission (TRC) established in 2015 to reinvestigate conflict-era rights violations has registered “62,940 complaints of the victims of which 322 are identified as rape and sexual violence cases.”²² The task of supporting survivors of sexual and gender-based violence from the conflict period – identifying them, assessing their special needs, understanding the intersectionality of the human rights violations and discrimination experienced – remains a major challenge. Despite the establishment of the TRC, and the Commission of Investigation on Enforced Disappeared Persons (CIEDP), the SGBV survivors are yet to receive any support.²³

1.4. Research objectives

The research was designed to investigate and better understand the elements that prevent access to justice in post-conflict Nepal, and the impact that transparency and accountability mechanisms (or lack thereof) can have on it. It does so by analyzing the current situation of women's human rights and the women, peace and security resolutions implementation in Nepal, and the linkages between these two crucial legal frameworks and transparency and accountability in post-conflict Nepal.

The key objectives of the research were as follows:

To understand the linkages between Human Rights, Women, Peace and Security and existing transparency and accountability mechanisms (or lack thereof) in post-conflict Nepal;

Solicit the views of survivors of sexual and gender-based violence (SGBV) as well as the government, civil society regarding factors that prevent survivors from accessing justice.

19 UNFPA Nepal, "Priority Areas for Addressing Sexual and Gender Based Violence in Nepal" (2007).

20 Mishra, Sadhna. "Armed Conflict and Human Trafficking in Nepal" (2017).

21 As stated by a female Key Informant Interview respondent (NGO) working in the sector of conflict related sexual violence survivors, during this current research.

22 Source: TRC (2015) TRC Bulletin, Year 3, Number 2, 2015 Chaitra. Truth and Reconciliation Commission, Nepal, Babarmahal, Kathmandu.

23 Human Rights Watch "Nepal: Transitional Justice Proving Elusive" (2018).

2.0 Research Methods and Approaches

2.1. Selection of research methods and target groups

The researchers discussed the research scope and objectives with GNWP to identify the appropriate research methods and target groups. Based on the research objectives, it was decided that the research will be conducted using a combination of desk review; key informant interviews (KIIs) and focus group discussion (FGDs) with diverse stakeholders, including victims of conflict, representatives of government and constitutional body, political parties, human rights activists, media, and civil society, donor organizations, and experts. Due to time and resource constraints it was agreed that research would be limited to Kathmandu, Bhaktapur and Lalitpur. However, the FGD with conflict victims from Dang, Jajarkot, Kavre, Kirtipur and Lalitpur was also conducted. It was agreed that the FGD participants (including victims of conflict) will be provided with travel reimbursement to travel to Kathmandu, if needed. To avoid possible re-traumatization, it was agreed that the questioning of the victims will be limited to their experiences of accessing justice and other services post-conflict, and they will not be questioned about the violence and trauma they experienced.

2.2 Design of research tools

The researchers held discussions with relevant stakeholders, including conflict victims' network representatives, UN women, CSOs, etc. to collect feedback on key questions to be drafted. Based on the discussions, the researchers drafted the data collection tools for semi-structured Key Informant Interviews and Focus Group Discussions. The tools were reviewed by GNWP and finalized by the researchers in line with GNWP's feedback.

2.3 Data collection

A total of 20 KII respondents were interviewed for data collection purposes. Twelve of the respondents were between 40-50 years old, followed by 7 in the 30-40 years category. Only one respondent was above 70 years. One FGD with conflict victims, and one FGD with NGO representatives, media personnel, lawyers and human rights activists were also undertaken. The following table presents detailed information on the respondents.

	Conflict victims	Activists/ NGOs	Government	External Development Partners	Media	Academia/ Experts	Constitutional body representative
KIIs	2 (f)	6 (f:5; m:1)	1 (m)	5 (f:2, m:3)	2 (f:1, m:1)	3 (f:2; m:1)	1 (m)

FGDs/Consultations	
Victim group	6 (f)
Stakeholder group (lawyers, human rights activists, NGO representatives)	4 (f:2, m:2)

2.4 Data analysis

The researchers used qualitative data analysis methodology. The qualitative data was drawn both from secondary sources, and from the KIIs and FGDs conducted by the researchers. The findings of the analysis are presented below.

3.0 Women's human rights and WPS: where does Nepal stand today?

Nepal has a robust legal framework to protect women's rights and guarantee their participation in the post-conflict processes. The Constitution of Nepal guarantees 33 percent of seats to women in the Federal and Provincial Legislatures. In the last elections in Nepal in 2017, women won 29 per cent of seats in the parliament – the highest percentage of women in South Asia. The election of Bidhya Devi Bhandari in 2015 as Nepal's first female president, in addition to a female Chief Justice of the Supreme Court, and are also evident efforts towards incorporating women in key positions of leadership and decision-making.

The Constitution of Nepal also guarantees women's rights, notably equal right to inheritance and property, right to safe motherhood and reproductive health, right to compensation and justice for any type of violence, right to participate in all state structures and bodies based on the principle of proportional inclusion, and right to special opportunity in the spheres of education, health, employment, and social security on the basis of positive discrimination.²⁴ Additionally, Nepal's Constitution also establishes the National Women Commission (NWC), a statutory body that formulates, reviews, monitors, and evaluates national policies and programs regarding women's welfare and mainstreaming national development such as proportionate representation in all of the state agencies.²⁵

The strength of gender equality in Nepal's constitution was validated by research respondents, who indicated that the legal framework in Nepal is strong, and the government has the necessary policies to uphold and protect women's rights. Respondents also indicated that the government is implementing programs to promote women's rights and gender equality in the sectors of health, agriculture, economic empowerment.

However, the research respondents also emphasized that current state of implementation of WPS and women's human rights in Nepal as 'grave', not optimistic', and 'very fragile, and not a priority of the government'. A total of 11 KII respondents (7 women and 4 men), including a conflict victim and a representatives of a constitutional body, NGOs, INGOs and media have voiced such opinions. This was reinforced by participants of the FGD with victims as well as other stakeholders. One female KII respondent – a conflict victim, who now acts as a political representative noted, "the existing laws and policies are not very effective, though it cannot be said they are not working either". Another KII respondent stated that despite the progressive legislative and policy framework, including a National Action Plan (NAP) on WPS, "WPS implementation has not improved, rather it has worsened with the onslaught of various technologies which are being misused."

When asked about the main human rights concerns faced by women in Nepal, the respondents identified two key issues, namely, (i) sexual and gender-based violence (SGBV) and survivors' inability to access justice, and (ii) failure to prioritize women's human rights and access to justice in the post-conflict transition.

²⁴ Secretariat, Constituent Assembly, and Singha Durbar. "Constitution of Nepal 2015" Kathmandu: Constituent Assembly Secretariat (2015).

²⁵ Ibid.

SGBV has impacts across all spheres of women's lives. Respondents described the situation as grave, with security mechanisms being ineffective in protecting women from SGBV both within and outside their homes. The respondents also emphasized that because of the patriarchal culture and gender power dynamics, Nepali women cannot enjoy the rights enshrined in the Constitution. As stated by a male KII respondent, representing the media, "Nepali women's rights are defined and determined by their male counterparts; Nepali women are allowed to enjoy their rights only as much as the men want them to." As a result, women face insecurity and SGBV on a daily basis: when going to school and to work, at their workplace, and at home.

Respondents emphasized that women's vulnerability to SGBV is exacerbated by the fact that they are still under-represented in leadership position – both in the private sector and in the government. One male KII respondent noted, "women's participation at decision-making levels is symbolic." 13 respondents (8 women and 5 men) identified patriarchal values as a factor affecting women's human rights, with one male respondent noting that the so called 'high' Hindu caste men "run" the country, and identifying it as a major problem for women seeking legal recourse. Another respondent stated that "Nepal's patriarchal mindset and neo-feudalistic culture is too protectionist and often tends to the marginalization of women, rather than allowing them the space to open and speak up, let alone to rise and lead." Despite the quota for women's participation in elective positions established by the government, and political parties, rights advocates and media who keep raising the issues of women's rights, equality and transparency, "women's representation remains limited at 29%."²⁶

The respondents also noted the difficulties in access to justice for SGBV victims. A constitutional body representative further voiced that, "if we look at data, out of 100 reported SGBV cases, only 1 case is found to move ahead."

Respondents also pointed to the role of media in ensuring accountability for WPS implementation and victims' access to justice. Three respondents (one woman and two men) highlighted there is increasing awareness of SGBV and WPS within the media, although one respondent (female, media person) also voiced concern of a growing perception within the media that such sensitive issues should not be reported on. This, along with lack of political will, lack of trust in the state, impunity and weak implementation of laws is perceived by all KII and FGD respondents as contributing to the stigma around SGBV and making it increasingly challenging for victims to access information about how to seek justice and recourse.

The respondents also emphasized the failure to prioritize women's human rights and access to justice in the post-conflict transition. Although the CPA brought an end to the 10-year conflict, respondents stressed that structural challenges remain and create an environment of insecurity for women, in particular victims of conflict. Despite the CPA and legal framework developed post-conflict, human rights are not safeguarded.

Six respondents (three women and three men, coming from the academia, media and NGOs) noted that human rights were not a priority either during conflict or post conflict periods. Root causes for conflict, such as inequality, discrimination and lack of access to basic services, and Conflict Related Sexual Violence (CRSV) remain to be addressed. One respondent (male, political analyst) noted that

"Nepali women's rights are defined and determined by their male counterparts. Women can enjoy their rights only as much as the men want them to"

A man interviewed during the research

26 Cf. <https://data.worldbank.org/indicator/SI.GEN.PARL.ZS?locations=NP>

while the CPA ensured safe landing of the Maoist insurgents, human rights was not safeguarded and thus not prioritized during the reintegration process and in post conflict stages. This is linked to women's limited participation in the peace process, which led to their needs and concerns not being included in the CPA. Respondents also emphasized that there is currently a denial within the government that CRSV took place during the conflict, making it more difficult for victims to seek justice.

Lack of recognition of CRSV victims' needs in the post-conflict process is reflected in the fact that the TRC failed to include human rights violation as crimes against humanity and war crimes. As a result, victims of sexual violence have been marginalized in the truth and reconciliation process – for example, they have been excluded from the Intermediate Relief Program, which would entitle them to receiving reparations. In response to an individual complaint by a victim of sexual violence, the Human Rights Commission of the UN International Covenant on Civil and Political rights decided that in order to abide with international law, Nepal must “adapt the definition of rape and other forms of sexual violence in accordance with international standards and codify rape as a crime against humanity; amend the 35-day statute of limitations for the crime of rape and bring it into line with international human rights law.”²⁷ These factors were recognized by most respondents, including conflict victims who identified these as hindering the investigation and prosecution and punishment of perpetrators.

As a result of the above, 18 respondents (all, except for the government representative and a politician) claimed that there was little difference in the protection of women's human rights during conflict and in the present period, due to the interplay of power and politics, lack of access to justice, prevalence of widening impunity, and the fact that the government is not sensitive to women's security needs. The respondents, including conflict victims, also reported that there is an absence of trust among women that the state will ensure their protection. This can be linked to the lack of transparency and accountability of the state and media as well. Lack of transparency of reporting processes and mechanisms, as well as a failure to adopt confidential, secure, victim-friendly reporting mechanisms exacerbate the lack of trust. As a result, victims are unable to access justice, reparations and other basic services, and their insecurity is increasing. In cases of CRSV victims, this is aggravated by the stigma and the fact that victims often have no family and community support.

Lack of adequate accountability mechanisms for victims of sexual violence is directly linked to the failure to apply a gender lens in the Comprehensive Peace Agreement

4.0 Transparency and accountability in Nepal

4.1 Existing accountability and transparency mechanisms

When asked whether they were aware of any transparency and accountability mechanisms, respondents identified a number of formal and informal bodies and mechanisms. These included the National Human Rights Commission (NHRC), National Women Commission (NWC), Social Welfare Council - responsible for monitoring the civil society organizations, the courts at different government tiers, police, and judicial committees. The Commission for the Investigation of Abuse of Authority (CIAA) – the anti-corruption body – was also mentioned, but one respondent emphasized that its independence and impartiality is

²⁷ Cf. <https://trialinternational.org/latest-post/nepals-grand-debt-with-its-victims-of-sexual-violence/>; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F125%2FD%2F2556%2F2015&Lang=en

being questioned, with none of the oversight and accountability mechanisms are 'capable of doing their job'. In addition to the formal, state mechanisms, informal mechanisms such as paralegal committees and citizen forums were identified.

16 respondents (11 women and 5 men) agreed that despite the existence of different oversight mechanisms, there is no effective accountability system in Nepal, especially for crimes committed against women. Respondents identified several key barriers to effective transparency and accountability of state institutions towards women.

4.2. Lack of transparency in government processes and institutions leading to exclusion and mistrust

All respondents agreed that lack of transparency and accountability in Nepal was not a matter of an absence of policies or monitoring bodies, but rather their inefficiency and lack of implementation.

In this context, the respondents emphasized that Nepal's is heavily top-down and uses a prescribed policy formulation approach, which effectively excludes people and community for whom policies and laws are framed for from their design. Policy development processes are not transparent, and do not allow for meaningful participation of communities. As a result, the laws and policies do not reflect specific needs of the population, including women.

For example, respondents emphasized that the lack of adequate accountability mechanisms for victims of sexual violence is directly related to the failure to apply a gender lens and provisions on women's human rights in the CPA. Another example is the fact that – as noted by several respondents – despite the adoption of new laws designed to protect women, including the Domestic Violence law and Workplace Violence law, as well as the progressive new Constitution, the systems, mechanisms and processes in place are *de facto* unfriendly, complicated and inaccessible to women.

As a result of the non-transparent, top-down policy-making process, as one KII respondent noted, the state and political parties have focused on establishing policies, plans and physical infrastructures, rather than understanding and addressing structural gender inequality and social exclusion issues such as patriarchy, power dynamics, caste, class – which are both root causes of conflict and insecurity and a barrier to women's access to justice. The general pattern of government response to crises – including in post-conflict transition and disaster response – to form a committee or commission and expect it to address the issue, without attempt to build capacity or address structural causes. Another approach is to adopt a new policy or a set of guidelines or regulation without sufficient effort to ensure implementation. As a result, the state is failing to provide justice to women, by failing to address the structural and normative framework of violence by engaging local government structures, traditional leaders and male members of the society.

Furthermore, because there is no transparency and clarity on the functioning of the state institutions, including criminal courts and the TRC, women do not trust them. Stakeholder FGD participants as well as one KII respondent (male INGO/HR activist) noted that transparency and accountability in justice proceedings require confidentiality and victim protection, which are absent from both the regular criminal justice process, and the transitional justice in Nepal. There is

also no evidence of preparations to create an enabling environment for victims of CRSV to report without fear of repercussions or stigmatization. Because victims and witnesses do not have guarantees that their confidentiality will be maintained, they are afraid of reporting.

Respondents acknowledged that the NHRC has made efforts to demand greater transparency from the TRC and the CIEDP, and to make them accountable. They also noted that there is a legal framework that would allow for ensuring accountability. One KII respondent (female NGO/WPS representative) pointed out that Section 7.1.3 of the CPA guarantees “an impartial investigation and lawful actions against individuals responsible for obstructions in the exercise of the rights” and guarantees that the government will not encourage impunity.

4.3. Lack of accountability perpetuating gender inequalities

Respondents noted that Nepal’s laws are complex, and their implementation depends on the understanding of the relevant duty bearers, who are rarely held accountable. Lack of accountability means the implementation of laws depends solely on those in power. In this context, the respondents noted that general administration as well as justice system are controlled mostly by men, who tend to dismiss women’s claims or complaints.

This is particularly true in case of access to justice. Respondents noted that police often refuse to accept complaints against powerful rulers, who are usually male, or are pressured by political parties not to do so. When cases finally come to court, they are delayed. Additionally, women’s access to justice is limited by the lack of resources to hire a lawyer. As a result, the respondents indicated that the justice system is not “victim friendly”, but rather “elite friendly”, with those with power, position, wealth, and access to information having access to justice.

There was also a general perception among the respondents that dominant patriarchal cultures that imbues both the government and the wider society is exacerbated by issues of lack of transparency and accountability facing women. The respondents noted that the Nepali society continues to categorize women as secondary to men. As a result, the mindset of those within the police and the judiciary is often hostile or distrustful towards women, and there is a lack of understanding and appropriate guidelines on how violations of women’s human rights, including SGBV, are to be addressed. The respondents stressed that security agencies’ personnel are neither aware of the gravity of human rights violation against women and girls, nor capable of addressing them in an appropriate and gender-sensitive manner.

This leads to the “normalization” of violence against women across all layers of society – ranging from communities that often try to mediate, law enforcement that trivializes it and the justice system that delays justice and compensation.

Lack of effective transparency and accountability mechanisms perpetuates such gender inequalities, as there are no checks and balances that would prevent security and justice officials from bringing their own biases into the system.

4.4. Corruption

Corruption aggravates the negative impacts of the lack of transparency and accountability in Nepal. All KII respondents (except a male government representative who did not respond) noted that systemic corruption increases

The justice system in Nepal is not “victim friendly” – it is “elite friendly”

Participants in the Focus Group Discussion

the victims' vulnerability and restricts their access to justice. Major corruption at police and courts prevents speedy case clearance. As a result, as indicated by the male representative of constitutional body, it could take up to 5-6 years for a case of SGBV to be considered in the court. This effectively prevents women from accessing justice, as they do not have the resources to cover the legal fees during such a lengthy period. Although programs promoting access to justice have been designed by the government in collaboration with external development partners, prevalence of corruption remains a key obstacle to the provision of justice. One KII respondent aptly stated, "If there is *'khuwai piyai'* (term used to indicate bribes provided – in cash or in kind – to obtain favors) then work moves ahead, otherwise it does not." Respondents indicated that they are aware of cases of conflict victims being required to provide bribes, either to intermediaries who referred them to the relief mechanisms or facilitated the process of accessing relief, or to administrative officers providing support in order to be able to access the interim relief program.

Respondents also pointed to corruption and nepotism in appointing judges and personnel as another barrier to the access to justice. They noted that the appointments in the judiciary are often made based on political partisanship rather than expertise, and stressed that political parties "meddle" with accountability and judicial mechanisms, which aggravate the corruption and nepotism in the system. As one respondent noted, "They say one does not know who runs the judiciary and the administration. Impunity is linked to corruption and transparency. During conflict and the post-conflict transition, corruption has gone up. Demands of bribes and deals done under the table have increased."

Overall, the respondents stressed that politicians, bureaucrats and *'thekedaar'* (contractors) 'jointly run the country.' They perceived the government of Nepal as lacking political will to take action against corrupt officials who are violating human rights of women.

Another pattern of corruption identified by respondents as occurring in the context of both human-made and natural disasters is the misappropriation of resources. Lack of preparation for humanitarian crises, and absence of control policy, creates a fertile ground for corruption and misappropriation of funds for disaster response.

5.0. Impacts of corruption and lack of transparency and accountability on women

As described above, lack of transparency and accountability in state institutions, including in particular the judiciary and the transitional justice mechanisms, has severe impacts on women and SGBV victims.

The impacts identified by respondents can be grouped into three categories: (1) impunity and lack of access to justice; (2) insecurity and increase in cases of SGBV; (3) aggravating women's exclusion from decision-making.

5.1. Impunity and lack of access to justice

Absence of transparency and accountability and weak security mechanisms were identified as leading to rising impunity. For instance, former warring parties – state and rebels – were never held accountable for deaths women, children

"During conflict and the post-conflict transition, corruption has gone up. There are more demands of bribes, and deals done under the table"

Interviewee during the research

and men during the conflict. As one respondent noted, “Impunity is the single biggest challenge for victims in Nepal, and more so to women victims.”

Women face a plethora of structural barriers to accessing justice. For example, the traditional values, fear that reporting violence will negatively affect her family, and the belief that seeking justice is a sign of weakness; illiteracy; fear of stigmatization and abandonment by the family; and lack of financial independence, were all mentioned as barriers to women’s access to justice. This is aggravated by lack of transparency, which leads to misinformation, or lack of information about the justice system and procedures, the government’s role and responsibilities, and their own rights. The respondents noted that victims are ignorant about the processes and avenues that are available to them. This compounds their mistrust towards the system and makes them less likely to seek justice. Moreover, the complex processes and corruption at various stages further challenge them. As one FGD participant stated, often when a case is brought to the appropriate bodies, no initiative is undertaken “as there is no personal benefit to [the officials], with a ‘fast track mode’ undertaken only when there is a direct personal advantage.”

There is a belief among the perpetrators of sexual violence that they are above the law

Participants in the Focus Group Discussion

Moreover, the patriarchal culture perpetuated due to the lack of accountability contributes to a minimization of women’s experiences and reports of violence. To illustrate this, the respondents frequently pointed to the recent cases of Roshani Shahi²⁸ and Nirmala Pant²⁹. A respondent highlighted that among perpetrators there is a belief that ‘the rule of law does not need to be obeyed, and a feeling that “law does not touch me; I am above it.”’

Respondents also pointed out that despite the existing laws, and the calls for ensuring accountability from the UN and the international community more broadly, the situation has not improved. One respondent expressed concern that victim’s access to justice might further deteriorate with a proposed bill to amend the National Human Rights Commission of Nepal which will “demoralize its spirit”, as it will “undermine its independence and effectiveness to implement its mandate in the promotion and protection of human rights.”³⁰ The same respondent also expressed concern over the TRC and CIEDP being “weakened by political intervention and non transparency in the commissioners recommendation process.”³¹

5.2. Insecurity and increase in violence against women

Respondents noted that the culture of impunity perpetuated by the inefficiency and lack of transparency in both criminal and transitional justice mechanisms

28 The case involved Parliament Secretariat staff Ms. Roshani Shahi. On October 2019 Ms. Shahi gave an interview to a journalist accusing the then Speaker of the House Mr. Krishna Bahadur Mahara of raping her. Following the interview numerous reports have come about where Ms. Shahi is accused of having made false accusations due to the depression medicines she was taking, and her husband divorced her. Her interview followed a division in society where she is even accused of having concocted the accusation.

29 Source: <https://kathmandupost.com/national/2019/07/25/everything-you-should-know-about-the-rape-and-murder-of-nirmala-pant>. The case involves the rape and murder of the 13 year old Nirmala Pant, on 26 July 2018, followed by numerous gross incompetencies by the police, such as washing of the victim’s clothes and covering of body, lack of proper care of evidences, failing to maintain chain of custody which documents the chronological sequence of the custody of physical evidence. Despite a nationwide protest demanding justice, to date there has been little to show. On July 23 2019, Home Minister Ram Bahadur Thapa during a press conference flippantly remarked rape was common place in Nepal, and Pant’s rape and murder had been “unnecessarily politicized”.

30 Source: <https://www.forum-asia.org/?p=28839>. Some contentious points in the proposed amendment bill to amend the NHRCN Act 2012 and issues which could curtail the protection mandate and independence of the NHRCN include: Making it mandatory for the NHRCN to recommend its investigated cases to the Attorney-General. The Attorney-General would have discretionary power in filing cases, and it may request the NHRCN to further investigate or provide more evidence before registering a case; Require consent from the Finance Ministry to accept additional financial resources for it to carry out human rights related activities. Such requirement may pose a threat to the independence of the Commission, as it provides room for the Government to interfere in the financial autonomy of the NHRCN; The amendment bill has dismissed Article 26 (B) of NHRC Act 2012, which provides the legal basis for the creation of the regional and sub-regional offices of NHRCN. It will reduce the NHRCN’s resources and hinder the implementation of the Commission’s mandate in the country

31 Source: <https://myrepublica.nagariknetwork.com/news/tj-appointments-process-hits-snags/>

leads to insecurity and is a major barrier to the implementation of WPS agenda. Since state mechanisms are not accountable, they are ineffective, and they are often corrupt leading to subversion of justice.

Because perpetrators are not held accountable, there is a belief that violence can be perpetrated without consequence, and as a result girls and women are threatened and victimized on a daily basis. Despite the signing of the peace agreement, there is increasing violence against women everywhere in Nepal, as evidenced by the Nepal Police Women, Children and Senior Citizen Service Directorate report. While there is no research that establishes a link between the two, respondents believed the rampant impunity of conflict perpetrators may be giving rise to violence against women.

5.3. Lack of access to services and reparations

Weak institutions and women's lack of trust and confidence in the system – as described above – prevents women who experienced sexual violence from coming forward. This results in severe under-reporting. As one respondent (male respondent, human rights activist) noted, “out of the 60,000 cases reported to the TRC, only 300 are said to be CRSV. However, there is one district that has more than this number.”

In addition to leading to impunity, lack of reliable reporting channels further victimizes women, and leads them to stay in isolation. Respondents noted that the two transitional justice mechanisms, TRC and CIEDP, have not provided any concrete mechanism to support conflict affected community for internalization of justice and responding to their daily needs. Victims of CRSV, in particular women and children, have not received any support from the Nepali government – and any effort to collect their information, identify and address their needs is yet to take place. This is compounded both by the inefficiency of the system fueled by corruption, and by the prevalence of the patriarchal beliefs – which are perpetuated by the lack of accountability towards the population within the system.

Moreover, with the exception of one respondent (male government representative) who did not respond, all of the KII respondents and FGD participants noted that absence of transparency and accountability has impacted conflict-affected women and girls' access to basic services, humanitarian aid and reparations. Although some victims and survivors received relief packages, access to shelter facilities and some income generation support, this was not the case for all. A male respondent representing an INGO noted that “SGBV victims were pushed out of the reparations discourse from the very beginning” as their needs were not recognized.

Initially, all names of the recipients identified for post-conflict reparations were male, despite the fact that women were disproportionately affected by conflict, as described in the background section above. At the local level, children of conflict victims have had to go through lengthy and cumbersome processes to access scholarship facilities; children born out of rape are yet to even receive any support. Finally, although the government has offered 1 million Nepalese rupee compensation to family members of those disappeared and killed during conflict, accessing the fund was very complex.

Subsequently, three forms of exploitation were identified as visible, namely: reparations being accessed by those injured under non-conflict situation

SGBV victims were pushed out of the reparations discourse from the very beginning

A man interviewed during the research

if they had the right connections; tendency to ask for compensation by officials referring the victims' name to the system; and women who had to use intermediaries who kept some of the compensations to themselves as a fee, in order to be able to use the fund.

5.4. Aggravating women's exclusion from decision-making

The research found that corruption is also depriving women of opportunities to reach decision-making positions. Corruption and nepotism make it difficult for women to access the male-dominated spheres of governance and politics. Those who are included in decision-making, are often the women who are believed to be complacent and expected to closely follow the party line. Therefore, they are unable to question or change the system. In this context, the respondents made references to the 2017 local elections, in which women secured 40 per cent representation in ward membership and 91 per cent of the deputy mayor posts. However, the respondents highlighted that the elected women's capacity to influence the decision-making as being very challenging. The respondents noted that female elected representatives are compelled to keep quiet and comply with their male party colleagues' decisions, as the media tends to manipulate disagreements in the men's favor. Lack of transparency and accountability mechanisms aggravates this situation, as the women are unable to challenge the claims and accusations made against them; small errors of women become sensationalized while major ones committed by the men remain undisclosed.

Accountability, corruption and underrepresentation of women are a vicious cycle

As a result, despite a progressive constitution, the pervasive patriarchal social norms, aggravated by lack of transparency and accountability, leads to men's dominance in politics and decision-making. Women who are included in party lists or selected to nominative positions are often tokens and chosen based on their likelihood to comply with the party line and decision made by male leaders.

Overall, respondents noted that lack of accountability, corruption and underrepresentation of women are a vicious cycle. Political parties, government authorities, courts and police were mostly perceived failing to provide justice to poor, vulnerable and those without access to political decision-making authorities. Those who attempt to promote accountability – both women and men – are removed from the scene to pave way for easy corruption, both petty and systemic.

6.0 Reviewing linkages: Key transparency and accountability concerns and WPS concerns which have arisen over the years

The above analysis clearly indicates that lack of accountability and transparency, and systemic and petty corruption in Nepal impede the implementation of the WPS agenda.

Because of the lack of transparency and accountability, decisions being made are generally in favor of the rich, powerful and those politically affiliated. This negatively impacts women's participation, access to justice and human rights. It also undermines women's protection by fostering a culture of impunity, and aggravating social and economic marginalization of women. Respondents

from across government, constitutional body, CSOs human rights activists and conflict victims agreed that the state is not transparent and accountable, which leads to an increased impunity and violence against women. As a result of lack of transparency and accountability, victims of SGBV cannot access justice, and risk being re-victimised through stigmatization, while perpetrators walk freely with increased confidence level and widening impunity.

Corruption has also affected women's access to relief and recovery services – both in terms of transitional justice, and in terms of reparations and relief packages. Respondents noted that in many cases it has been impossible to access relief and recovery without paying bribes or using “middle persons” who took a cut of the reparations package that the women were entitled to.

Lack of transparency breeds distrust towards institutions. CRSV survivors are not filing cases with police or courts because they fear that no steps would be taken to protect them and their report will result in their further marginalization. Women survivors are still facing stigmatization, multiple physical and psychosocial problems, and lack of social, psychological and legal remedies to their problems. As a result, some respondents pointed out, they might transfer the notion of victimhood to their children. To end this cycle, there is a need to shift the social and cultural norms that suppress women and focus on gender-sensitive peacebuilding, and integrating a strong gender lens in transitional justice settings where gender-based violence has occurred during the time of conflict.

The failure to consider structural causes of violence, gender justice has been largely overlooked by the peace process and the transitional justice processes in Nepal. The current transnational justice mechanisms and government institutions have failed to analyze the effects of violence on women, especially on women who faced sexual violence; in responding to their immediate and long-term needs, and to provide them a space to share their experiences of injustice.

Full and effective implementation of WPS is therefore necessary to address the challenges of lack of transparency and accountability in Nepal. Bringing a gender lens to the post-conflict recovery and transitional justice must be a priority.

Another key element identified by both female and male respondents was to increase meaningful participation of women in the system, in order to break the cycle wherein crimes committed by men are overlooked or dismissed by their male counterparts in the justice system, and wherein personal interests within political parties take priority over ensuring access to justice.

Conclusion and Recommendations

In conclusion, the research has clearly established that lack of transparency and accountability significantly affects survivors' access to justice and relief and recovery services; as well as women's ability to meaningfully participate in decision-making.

Due to power imbalances, with men having more access to power, corruption and lack of accountability makes women vulnerable. The violations of women's human rights affect women's security, as survivors and witnesses face further

threats from state parties, political parties, their families, and broader society. The systematic discrimination against women broadly, and victims and survivors of violence morespecifically is perpetuated by severe lack of transparency and lack of accountability.

Trust in the democratic process and ensuring inclusive state institutions plays an important role in safeguarding women's human rights. Transparent and accountable mechanisms are essential for creating an enabling environment where survivors and victims feel safe, come forward with their testimonies, and access justice. Transparent systems are also a necessary pre-requisite for just and equal representation and meaningful participation of women.

To address the current lack of accountability and transparency in the post-conflict transition in Nepal, the following recommendations should be implemented:

To the Government of Nepal

Develop and implement anti-corruption policies with a strong gender lens;

Increase efforts to provide access to justice to victims of CRSV and hold perpetrators accountable including through the review of judiciary and transitional justice and relief and recovery mechanisms to ensure that they are fair, transparent, and efficient;

Ensure community and women's participation in policy-development processes to ensure transparency and accountability;

Provide dedicated services to SGBV survivors such as safe homes or one stop crisis centers which function effectively and efficiently;

Provide adequate and regular training to the judiciary and law enforcement officials to ensure they are aware of their roles and responsibilities and are sensitive to the different needs of women and of SGBV survivors;

Establish Women Cells in police stations across Nepal (currently only existing in Kathmandu)

Newly elected mayors and local officials, including the female Deputy Mayors, should take advantage of the decentralized, federal structure of the Nepal's governance system to strengthen the response to CRSV and SGBV in their local areas;

Integrate a strong response to the short- and long-term needs of victims of CRSV into the second generation National Action Plan on Women, Peace and Security, which is currently being drafted under the leadership of the Ministry of Home Affairs;

Recognize the structural causes of conflict and violence against women and commit to systematic sociocultural change to ensure women's empowerment and security;

Increase financial support to the implementation of WPS including funding for women's rights organizations; and integrate WPS into all government programs and policies.

To the political parties

Integrate WPS as a key part of the parties' political agenda;

Support concerted action by the women politicians' caucus, with strong support from male leaders, to implement the WPS resolutions, and support the needs of victims of CRSV;

Lobby for the increase in funding for WPS implementation within the government; and

Challenge patriarchal culture within the party and the political system.

To the Members of Parliament

Integrate WPS provisions into all relevant laws, budgeting, and oversight to ensure effective implementation;

Consult and coordinate closely with civil society, conflict victim networks, media and other relevant actors to better understand the WPS agenda and gaps in its implementation;

Use parliamentary oversight function to point out and condemn cases of lack of transparency, especially in the transitional justice processes, and hold duty-bearers to account.

To the National Women's Commission, Truth and Reconciliation Commission and CIEDP

Ensure swift and thorough investigation of CRSV and SGBV cases, guarantee confidentiality, victim and witness protection as well as gender-sensitive and speedy prosecution;

Provide necessary support to victims before, during, and throughout the process of investigation, prosecution, and enforcement of the court decision.

To civil society, victims' networks and groups:

Sustain advocacy for the full implementation of the WPS agenda and for the end to the impunity for perpetrators of CRSV and SGBV;

Organize public debates and dialogues and use media social media to raise broad awareness about the importance of access to justice and transparency of the transitional justice mechanisms, as well as about the existing laws and relevant provisions of the Comprehensive Peace Agreement;

Amplify the voices of victims of CRSV and SGBV to bring their perspectives and needs to the public debate;

Continue to put pressure on the government to ensure transparency and accountability for the implementation of the WPS agenda and policies on access to justice; women's security and rights; and

Sustain engagement with traditional and religious leaders who can play significant roles in abolishing traditional practices that normalize violence against women and perpetuate discrimination.

To the media

Highlight the issue of inter-linkages between corruption, non-transparency and non-accountability and how these aggravate victimization and re-victimization of SGBV and CRSV survivors;

Produce and disseminate investigative reports on SGBV and CRSV to create a wider understanding of the barriers victims face in accessing justice, and the importance of transparency and accountability.

