Nepal: Needs of Sexual Violence Survivors and Children Born Out of Rape
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ABOUT THE AUTHOR

Pinky Singh Rana is involved in numerous CSOs as a researcher, trainer, programme designer and evaluator: advocating for gender equality, elimination of violence against women, ensuring women's reproductive rights and WPS. Ms. Rana has been involved in groundbreaking publications that have effectively been used by and for the women's movement in Nepal. During conflict and the post-conflict transitional period, Ms. Rana has strategically advocated for women’s participation in peace-building and conflict transformation through: integration of UNSCRs 1325 and 1820 in security forces’ training manuals, training to security personnel, reaching out to conflict-affected women’s groups at grassroots and district levels, and monitoring of the National Action Plan (NAP) on Implementation of UNSCRs 1325 and 1820. An active member of the 1325 Action Group, Ms. Rana is currently engaged as a team member for drafting UNSCRs 1325 and 1820 NAP Phase II.

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1. INTRODUCTION

1.1 BACKGROUND

Wars and conflicts in recent history continually underline women and children’s collateral victimisation. Death, disabilities, widowhood, physical and mental torture, violence – whether through direct, indirect or complete non-engagement in conflict – have become an inexorable fact.

In Nepal, exclusion of large numbers of Nepalese from political, economic and social processes based on their ethnicity, caste, gender and religion became root causes for a decade-long armed conflict (1996-2006). Although the conflict officially concluded with the signing of the Comprehensive Peace Agreement (CPA) between the Government of Nepal and the Communist Party of Nepal-Maoist (CPN-M) in November 2006, Nepalese women, men and children paid a heavy price. There have been over 17,000 deaths of women and men recorded by the Ministry of Peace and Reconstruction, over 8,000 children orphaned, an estimated 9,000 women widowed, over 1,300 disappeared, and over 4,000 women and men disabled.1

Various forms of gender-based violence (GBV) encountered by women and girls, ranging from harassment and torture to conflict-related sexual violence (CRSV), have also been reported during this period. However, in the context of CRSV victims/survivors and children born out of rape (CBR), official data is unavailable. Efforts by a few CRSVs to access justice have remained ineffectual, deterring others from reporting cases; in a society where sexual victimisation is regarded as taboo. The economic, social, medical and psycho-social needs of CRSV victims/survivors of CRSV and CBR remain to be systematically compiled. A decade since the CPA, victims/survivors and CBR remain excluded from any government support services accessed by other conflict victims, while perpetrators continue to enjoy impunity.

2. INTERNATIONAL AND NATIONAL FRAMEWORK OF RESPONSE TO CONFLICT-RELATED SEXUAL VIOLENCE (CRSV) IN NEPAL

2.1 THE NATIONAL ACTION PLAN (NAP) ON IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS 1325 AND 1820 (2011/12 - 2015/16)

Acknowledging the need for addressing the impacts of conflict on women and girls, the Government of Nepal adopted the National Action Plan (NAP) on Implementation of the United Nations Security Council Resolutions 1325 and 1820 (2011/12 - 2015/16) on 1 February 2011. Structured around the five pillars of: (i) Participation; (ii) Prevention and Protection; (iii) Promotion; (iv) Relief and Recovery; and (v) Resource Management and Monitoring and Evaluation – with respective objectives and corresponding strategic objectives, activities, desired results and indicators – the NAP aimed to contribute to the overall goal of achieving sustainable peace and a just society. A highly consultative and collaborative process that harnessed women’s participation, leadership capacity, resiliency power, and ensured their protection, the NAP addressed both strategic and practical needs of conflict-affected women and girls. A core feature within the NAP was also the recognition of sexual violence survivors and the need to provide varied required support. However, CBR have not been directly mentioned therein. It is also pertinent to state that during this period, Nepal was among the

113 nations that signed the ‘Declaration of Commitment to end Sexual Violence in Conflict’ in 2014: pledging to hold perpetrators to account and provide better support to victims.²

Today, after five years of NAP implementation, assessment and reviews indicate that the NAP “played a crucial role in guiding discussions on Women, Peace and Security (WPS) in the country”.³ NAP implementation focused primarily on awareness raising, advocacy and lobbying on NAP indicators, while programme activities addressed participation and promotion, and to a comparatively lesser degree, protection and prevention, and relief and recovery. However, various monitoring reports and desk reviews have determined that the broad scope of the NAP and the failure to allocate budgets caused its implementation to have significant inadequacies. In addition, inadequate ownership among government agencies, absence of focused program planning and result oriented time-bound targets, failures in the implementation process and assigned responsibilities, the focus at the central level, limited civil society organization (CSO) space, and absence of accountability proved to be major structural and procedural shortcomings. However, perhaps the most critical gap has been the limited focus on conflict-affected women and girls and former combatants, and the inability to support CRSV victims/survivors, and CBR. Whether the neglect of CRSV victims/survivors has been deliberate or inadvertent is ambiguous, but reviewing the state of affairs during the NAP implementation period, a number of causal factors may be identified: (i) Lack of knowledge on their existence, to denial of their existence; (ii) Non-recognition and non-prioritisation of CRSVs victims/

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survivors; (iii) Lack of know-how of stakeholders on how to handle CRSV cases; (iv) Unwillingness of stakeholders to ‘ruffle any feathers’; (v) Politicisation for vested interests; (vi) Lack of victims and witness protection; (vii) Pervasive impunity of perpetrators; and (viii) Inadequate lobbying for CRSV victims/survivors and CBRs.

2.2 TRANSITIONAL JUSTICE: STATE RECOGNITION OF VICTIMS/SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE (CRSV) AND THE TRUTH AND RECONCILIATION COMMISSION

Efforts to support conflict-affected women and girls reveal that while physical and mental torture is more openly discussed, sexual violence episodes and their ensuing impacts such as physical and mental trauma, and CBR generally remain concealed and under-reported. Whether victims/survivors choose to disclose their victimisation, or fear further victimisation and traumatisation, many are also inhibited and convinced sharing will not lead to receiving any support.

The recognition of CRSV victims/survivors has been a primary hurdle towards ensuring their support. Research has been conducted by CSOs4 and United Nations agencies, such as UNFPA and UNICEF, ranging from qualitative and case study based to district specific research. Nevertheless, the government is yet to acknowledge research findings and identified CRSV victims/survivor numbers, due to diversity in research methodologies. Moreover, the risk of duplication endures, as there has been no endeavor towards their standardised documentation, and the exact magnitude of CRSV victims/survivors and CBR remains unknown.

A five-member Truth and Reconciliation Commission (TRC) was constituted by the decision of the government’s Council of Ministers, dated 10 February 2015, in accordance with the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014. The TRC was assigned a core responsibility to “Investigate incidents of gross violations of human rights, find out and record the truth and publish it for the general public”.5 The definition of “Gross violations of human rights” includes rape and sexual violence. To date, as many as 45,000 cases of human rights violations committed during the armed conflict, have been registered with the TRC; nevertheless, the exact number of CRSV cases is undetermined. Moreover, efforts by the TRC,

CASE 1:

In a terai district of Far Western development region, Mr. Joshi* approached the Local Peace Committee (LPC) – a district level government structure established to support conflict-affected victims – enquiring on availability of support for his wife who had undergone sexual violence during the conflict period. The LPC directed Mr. Joshi to the Chief District Officer (CDO) for possibilities as it was unable to support due to the absence of government guidelines pertaining to sexual victims/survivors. However, here again his attempts proved futile. As the government had not recognised CRSV victims/survivors, nor developed guidelines, the CDO was helpless. The case was closed, and is pending until the Government of Nepal recognises CRSV victims/survivors, and determines support strategies.

Case narrated to author by LPC during a Focus Group Discussion conducted during NAP Mid-Term Monitoring, 2014.

4 Saathi, IHIRICON, ICTJ, Jagaran Nepal, INSEC, Human Rights Watch, NCCR, HIMRIGHTS, World Vision Advocacy Forcum
UNICEF and UNFPA, etc.
calling for CRSVs to register cases have been met with scepticism, with victims claiming, “What will come of it?; We will only report, but no further action will be taken; It is already 10 years since the Comprehensive Peace Agreement – what will they do?” Such scepticism is further fuelled by theories that TRC members being politically appointed will influence its ability to accomplish assigned tasks. Another critical factor to be considered is the limitation for filing a complaint on rape. Although the earlier 35-day statute was extended to 180 days, until the statute of limitation is revoked, CRSVs cannot access justice.
2.3 INTERNATIONAL MECHANISMS FOR ADDRESSING CONFLICT-RELATED SEXUAL VIOLENCE (CRSV) IN NEPAL

The recommendations of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, highlights that State parties “Prohibit all forms of gender-based violence by State and non-State actors” and “Prevent, investigate and punish all forms of gender-based violence, in particular sexual violence perpetrated by State and non-State actors.” Recommendations also include the need for collection of standardised data on sexual violence, as well as ensuring medical, legal and psycho-social support services to CRSV victims/survivors. Moreover, the Committee recommends that with regard to the women, peace and security (WPS) agenda, State parties “Enhance collaboration with civil society and non-governmental organizations working on the implementation of the Security Council agenda on women, peace and security.”

3. CONFLICT-RELATED SEXUAL VIOLENCE (CRSV) VICTIM/SURVIVOR NEEDS TO BE ADDRESSED: STRATEGIC AND PRACTICAL NEEDS

Ongoing efforts to frame NAP Phase II, is providing a window of opportunity to support CRSV victims/survivors and CBR. Support packages to CRSV victims/survivors and CBR identified and confirmed through systematic research and supported through the NAP, can to some extent bring closure to victims’ anguish, and ensure perpetrators are brought to justice. It will also be an acknowledgement by all conflicting parties of the humanitarian costs of the insurgency on women and children, and a step towards ensuring social harmony and prevention of future occurrences. The NAP Phase II is expected to support victims/survivors, and potentially collaborate with TRC, for provision of comprehensive support in relief, recovery and access to services, along with psycho-social support.

Understanding the mental, physical, social and societal level of impacts that CRSV victims/survivors and CBR encounter, the current paper suggests the need for comprehensive support packages that address both practical (immediate) and strategic (long-term) needs.

Step 1: Defining CRSV victims/survivors and children born out of rape in order to provide support through national processes

Steps to support CRSV victims/survivors and CBR demand definitions agreed upon by government, CSOs and CRSVs representatives. Taking the international definition – “Conflict-Related Sexual Violence refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against, women, men, girls or boys that is directly or indirectly linked to a conflict.” – may be the first step, which however may require to review and revision as per the national context.

An agreed upon definition will allay potential disputes at a later stage. There is a general perception that CRSV cases will generally occur from conflicting parties, namely, security forces and Maoists. Care should be taken to ensure within the definition that perpetrators may be from within the family, neighbours, communities, as well as from conflicting parties. An initial proposal within this paper includes the following:

7 Ibid.
8 Ibid.
Victimised by security forces.
Victimised by Maoist insurgents.
Victimised by family members, neighbours and community members.
Victimised by strangers.

Step 2: Determining a timeframe

A core issue to be focused on is the timeframe of the victimisation. Differing versions exist on whether it is only victims of the armed conflict period who should be identified, or whether the pre- and post-conflict periods should also be a determining factor during identification. This paper suggests that all CRSVs within the period of 1996 to 2006, the beginning of the conflict to its formal conclusion, should be included. In addition, post-conflict victimisation occurring two years from formal conflict conclusion, should also be included. Furthermore, other forms of CRSVs occurring in the terai, during the Madhesh Aandolan should also be included.

Step 3: Identification of CRSVs

The most challenging feature in this initiative will be identification of CRSVs. In a society where patriarchal socio-cultural values determine the outlook towards women and girls, and their virtue is determined by her virginity before marriage, and monogamy during marriage, for those courageous enough to defy these norms, every endeavour must ensure their risks are not in vain. Past anecdotal evidence of victims/survivors who divulged cases, shows that families and communities further victimised them, underscoring the need for stringent confidentiality measures.

Teams of experts, including representatives of CRSVs, should be trained and deployed across the nation for identification purposes. During such identification processes, the needs of CRSV victims/survivors and CBRs – ranging from criteria for confirmation of victimisation, privacy and confidentiality, immediate and long-term needs – must be closely assessed. Each deployed team should comprise medical and psycho-social experts, with the ability to interview and capture information, and investigate. Measures should be taken to ensure identified and confirmed victims receive immediate support post-interview, to dispel fears that “government will only question and not support”. A defined timeframe should be provided on the other possible forms of support that will be provided. In cases pertaining to CBR, the needs of the child and family must be determined and provided.

Step 4: Practical needs of CRSVs

Over 11 years has passed since the formal conclusion of the insurgency. During this period the number of CRSV victims/survivors and CBR and their state of affairs remains unknown. While their identification and documentation is critical, and already delayed, a comprehensive package must be taken alongside documentation. Research ethics prevent the support of victims during interviews. However, review of research on CRSVs conducted over the years indicates that victims/survivors are repeatedly interviewed without receiving any form of support. To avoid such instances, this paper suggests that victims/survivors – upon being confirmed – are provided comprehensive packages. These packages can be delivered under the guise of being health camps, awareness programmes, or other socio-economic development packages instead of being openly targeted at CRSV victims/survivors. This is in order to avoid scrutiny and possible ostracisation by family and community members. Suggested possible practical needs are:
4.1 Psycho-social counselling: Psycho-social trauma and depression can be long-term and damaging to the victim/survivor, as well as his/her family members. Measures for dealing with victimisation may differ from person to person, and families. In cases where the victim/survivor reveals a case, some families may be supportive, while others may blame them or a CBR, thereby perpetuating the victimisation. Where CBRs are present, situations may vary from supportive family, and forced migration due to social ostracisation, to inability to obtain citizenship for a child. Irrespective of the type of case, counselling is identified as a core requirement for cathartic purposes. At times, counselling may go beyond the victim/survivor, to their family members as well.

4.2 Food, shelter and clothing: Immediate basic needs for victims of CRSV are a key requirement. In the case of Nepal, the time-lapse may make this seem redundant, but in cases where traces of traumatisation and inability to move beyond the victimisation are evident, this may become essential (especially when the remoteness of and poverty in some conflict-affected regions are considered). In some cases, shelter may also be required, under which circumstances government and CSO-managed Safe Houses need to be prepared in advance.

4.3 Access to general health services: Impacts of sexual violence can lead to debilitating health concerns: ranging from psychosomatic to physical disabilities, and reproductive health complications. Linkages with existing government and CSO services, or referrals or support through mobile camps should be available to facilitate their access to services.

4.4 Access to reproductive health services: Reproductive health impacts from CRSV can be long-term, such as sexually transmitted infections (STIs), problems with reproductive organs, prolapsed uterus and inability to conceive. Such health concerns may require long-term treatment that victims/survivors cannot afford. The collaborative effort of government and CSO entities must ensure that the required care and support is regularly provided.

4.5 Access to economic opportunities: Victims/survivors of CRSV are often impacted in their overall lives. One of the major impacts is manifested in their ability to work and earn a living. Support in micro-credit, income-generating activities, and small enterprises – depending on the local scenario – and linking with markets, can provide potential openings.

4.6 Ensuring privacy and confidentiality: Many CRSV victims/survivors may be unwilling to share their cases or report, either because they have started new lives, are unwilling to reopen old wounds, due to a sense of futility, or even a fear of retribution. The risk of social stigmatisation runs high in a society where rape victims often face blame. CBRs may also face similar conditions. Under such circumstances maintaining the privacy and confidentiality of victim/survivor cases should remain a priority, with measures devised to ensure further damage does not transpire. Support mechanisms must ensure victims/survivors’ access to services remains undetected by others.

4.7 Legal support: Legal support must come as a second phase of support, following relief and recovery. Legal organizations should then be engaged to follow up on cases for victims/survivors and CBRs to access justice, in coordination with the TRC.

4.8 Victim and witness protection: A few cases shared during workshops indicate that some victims/survivors may be aware of a perpetrator’s identity. They may also have witnesses who may be able to support them. Yet threats of retribution, and use of financial and political influence may be preventing them from demanding justice. Efforts to protect both victims and witnesses must be initiated as components of research and investigations.
Step 5: Ensuring appropriate human and budgetary resources:

The process of researching, identifying and providing support to CRSV victims/survivors and CBR will be a challenging and costly process. The costs range from researchers, counsellors, experts, and investigators to the provision of comprehensive packages. Both short-term and long-term initiatives must be acknowledged and budgeted from the outset.

Step 6: Lobbying for political support:

Political support will play a critical role in ensuring CRSV victims/survivors’ ability to access justice and support. Lobbying by government and non-government stakeholders with all political parties – from central to grassroots level – will be vital in ensuring CRSV victims/survivors are identified and able to get support. Investigation endeavours must not be turned into a ‘witch-hunt’ of a particular political party: a demand for justice and compensation to victims/survivors, and bringing the perpetrator to justice should be the emphasis.

Step 7: Capacity development (including media, conflict-affected groups, government and CSO entities):

CRSV victims/survivors and CBR are concerns that few in the government and CSO sector possess in-depth knowledge of. Efforts to build holistic support to CRSV victims/survivors and CBRs require clear understanding amongst representatives from various sectors, leading to positive mindset towards their needs.

4. CONCLUSION

Conclusions reached by this paper are as follows:

- A coordinated and collaborative effort whereby government, CSOs, external development partners (EDPs) and Nepali citizens align efforts to ensure support to victims/survivors of CRSVs will be critical. Whether it is knowledge, experience, expertise, best practices, or human and financial resources (from within the country or other war affected nations), support to CRSV victims/survivors should be a consolidated effort; not a public relations contest between actors as to who does what and contributes how much.

- Research initiatives immediately initiated by the government, must simultaneously work at identifying and providing support to CRSV victims/survivors. Past experiences of support to conflict victims underscore the risk of false claimants; for which stringent retributory measures should be announced. To circumvent such threats, indicators and criteria are fundamental to ensure CRSV victims/survivors and CBRs from within the stipulated timeframe, and with conflict as a causal factor, are identified.

- Learning from other nations’ efforts at supporting CRSV victims/survivors and CBR, along with national CSO knowledge and experience, can facilitate the process. The government’s close and consistent coordination with EDPs and CSOs – through apportioning of roles and responsibilities – can ensure wider outreach and enhanced qualitative support.
Government efforts to reach CRSV victims/survivors must be widely disseminated to reach grassroots levels; as many CRSV victims/survivors and CBRs live in remote areas or are out of reach of information. Collaboration and coordination with national and local CSOs, conflict-affected groups and platforms, human rights groups and activists will facilitate victim identification. However, the process should also instill zero tolerance for violation of privacy of any victim averse to sharing information. The need to work closely with media houses, ensuring that journalists understand and respect victim/survivor privacy, should be the focus. Any effort by individual, organizations or parties to manipulate cases for promotion of vested interests should be circumvented.

CRSV victim/survivor and CBR support will be a costly initiative, with investment made on varied facets for support and empowerment. This investment must be accepted as critical to address the damage and suffering borne by the individual and their family: long-ignored, and considered non-existent and ‘collateral damage’.

Close monitoring and evaluation, and regular tracking of efforts and budgetary spending must be ensured. Past experiences indicate that by the time a target beneficiary is identified and reached there is little resource remaining. To address this, transparency on the availability of resources for CRSV victims/survivors is needed and better planning for allocations to individuals must take place in advance. Flexibility to revise allocations as per victim requirements is also vital. Accountability of efforts – of all stakeholders – must be consistently measured through a mechanism established for this purpose.

While the above represent immediate support, the strategic interests of CRSV victims/survivors should form part of the prevention and protection strategy. CRSV should be empowered through group and leadership programmes, and can become voices to prevent future such occurrence.