

12 year of signing of the "Comprehensive Peace Agreement 2006"

Conflict Victims' Charter

(Dwanda Piditko Badapatra)

Adopted by the
National Conference of Conflict Victims on
Transitional Justice

20 – 21 November 2018

Kamaladi, Kathmandu



Conflict Victims' Common Platform (CVCP)

Preface

During the decade of conflict in Nepal (1996 - 2006), unarmed citizens suffered killings, enforced disappearances, arbitrary detention, torture, rape and other types of sexual violence, as well as cruel, inhumane and degrading treatment. The period also saw property capture of thousands of citizens, illegal transfer of assets, arson and other types of destruction of property. Over the past dozen years, we the victims of the State as well as of the insurgents have been organising and conducting campaigns for justice as per our situation and abilities.

The Conflict Victims Common Platform (CVCP) came into being on 5 September 2014 through a national assembly of conflict victims and representative institutions. The organisation was formed to pursue a unified and effective voice for a victim-centric transitional justice process that protected the overall rights and interests of victims. We were united by our common understanding that one should lead one's case, and that representative institutions of victims are fully capable of organising and mobilizing for the cause.

The tasks of promulgating the new Constitution and management of the then Maoist combatants and weaponry have already been accomplished according to the Comprehensive Peace Accord (CPA). However, transitional justice that is so integral to the peace process remains in limbo. The Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons, established some four years ago, have failed to achieve anything palpable as far as the conflict victims are concerned. The victims are seeking not only legal recourse, but the right to know the truth, justice and reparation, reconciliation, respect and memorialisation.

On 21 November 2018, 12 years to the day of the signing of the CPA, it is urgent to review the efforts for transitional justice and work to make the entire process victim-centric and human rights-friendly. With this in mind, over the past few weeks, the CVCP organised provincial conferences in five venues, Biratnagar, Janakpur, Kathmandu, Nepalgunj and Pokhara. The general recommendation of these meetings was that the conflict victims seek a comprehensive conclusion to the transitional justice process. The National Conference of Conflict Victims on Transitional Justice which met on 20-21 November 2018 in Kamaladi, Kathmandu, discussed the suggestions received from the provincial conferences. On the basis of the discussions, a draft declaration was prepared and finalised, which was then adopted by the assembly as the Charter of Conflict Victims (*Dwanda Piditko Badapatra*). (The Charter includes eight perambulatory paragraphs and 23 operative paragraphs.)

We thank the office bearers of CVCP, all organizations affiliated to CVCP, and the conflict victims at large who attended the various conclaves and shared their deepest concerns and provided valuable suggestions. It is their commitment to and aspiration for justice that made the Charter possible. For helping organise the provincial conclaves of conflict victims as well as the national conference, and for their help in the drafting of the Charter, we also extend thanks to Suman Adhikari, founding President of the Common Platform, and rights activists Sushil Pyakurel, Kanak Mani Dixit, Tika P. Dhakal, Geja Sharma Wagle and Yagya Raj Thapa.

The CVCP also acknowledges the institutional contribution of civil society and human rights organisations, the media and the international community in preparation of the Charter. We appeal to all for their continuous cooperation in bringing the transitional justice process of Nepal to a meaningful conclusion.

Janak Bahadur Raut
General Secretary, CVCP

Bhagi Ram Chaudhary
President, CVCP

Wednesday, 21 November 2018, Kathmandu

Charter of Conflict Victims

(Dwanda Piditko Badapatra)

Adopted by the National Conference of Conflict Victims on Transitional Justice
20 – 21 November 2018, Kamaladi, Kathmandu

Preamble

We, the conflict victims affiliated with the Conflict Victims' Common Platform (CVCP),

Internalising the principle enunciated in Article 5.2.5 of the Comprehensive Peace Agreement (CPA) signed between the Government of Nepal and the then Maoist rebels on 21 November 2006 – *“Both sides agree to set up a high-level Truth and Reconciliation Commission through mutual agreement in order to investigate truth about persons engaged in serious human rights violations and involved in crimes against humanity, and to create an environment of reconciliation in society.”*;

Contemplating the human rights principles and the fundamental rights guaranteed by the Constitution of Nepal (2015), promulgated to usher lasting peace and institutionalise the democratic republic and federalism through ending the political transition, following the peaceful settlement of the decade-long armed conflict;

Following the spirit of the verdicts and judicial principles enunciated by the Supreme Court of Nepal on transitional justice in difference instances;

Respecting the Universal Declaration of Human Rights and the various international treaties, conventions and covenants on human rights Nepal is signatory to;

Reviewing the agreements and understandings reached between the Government of Nepal, the political parties and organisations of conflict victims on various occasions;

Recalling the unique Nepali experience regarding the management of Maoist ‘arms and armies’;

Recognising the need to review the ongoing transitional justice process and make it victim-centric and human rights-friendly, to bring Nepal’s transitional justice process to a meaningful conclusion through adherence to the basic principles of transitional justice such as truth-seeking, justice, reparation and institutional reforms to ensure non-repetition of human rights violations, based on the unique societal norms of Nepali society, and by adopting measures of reconciliation to ensure that conflicts do not recur in future;

Hereby unveil this CHARTER OF CONFLICT VICTIMS with the objective of assisting in the conclusion of Nepal's transitional justice process in a manner that respects the dignity of the conflict victims and recognises their valuable contribution in ushering of social and political change.

1. In order to create a foundation of trust, the State, the then insurgents and the top leadership of the major political parties must through public acknowledgement express remorse and tender apologies for the human rights violations committed during the decade-long armed conflict.
2. Given that it is the absence of political will and underlying commitment that has failed to move the transitional justice process forward even after 12 years of inception of the peace process, the Head of Government and top leadership of the major political parties including the ruling Nepal Communist Party (NCP) and the main opposition Nepali Congress must publicly express their commitment to bring the transitional justice process to a meaningful conclusion in line with the Constitution of Nepal (2015), the Comprehensive Peace Accord (2006), and the sentiment of conflict victims, taking credible and concrete initiatives without delay.
3. Since conflict victims are the primary stakeholders of the transitional justice process, their meaningful participation in both the overall process and related mechanism(s) is mandatory. The Government of Nepal and the major political parties must therefore ensure obligatory involvement of conflict victims in the entire process of transitional justice hereafter.
4. The participation of major stakeholders – the conflict victims, the State, the then insurgents and the major political parties – is mandatory in the transitional justice process. The National Human Rights Commission and civil society including human rights organisations should be consulted in the process. In this context, let it be clear that the conflict victims will not support decisions and processes designed according to the interests and convenience of the State, the then insurgents and the major political parties.
5. On the basis of the unique Nepali experience on the peace process, including 'the management of arms and armies', we call for the establishment of a credible high-level mechanism with the involvement of all stakeholders in order to create an environment of openness and trust to proceed with the transitional justice process.

6. Paying due regard to the Constitution of Nepal (2015); Comprehensive Peace Accord (2006); verdicts and mandamuses as well as principles enunciated by the Supreme Court on transitional justice; the various international treaties, conventions and covenants on human rights Nepal is signatory to; the agreements and understandings reached between the Government of Nepal, political parties and various organisations of conflict victims; international best practices; and the unique context and values of Nepali society – a document of common consensus on transitional justice must be drafted by the mechanism to be formed with the participation and consent of conflict victims. The prevailing policies and laws on transitional justice should be amended or rewritten on the basis of this document.
7. Both the Truth and Reconciliation Commission Act (2014) nor the Commission for Investigation on Enforced Disappeared Persons Act (2014) were adopted without any discussion with conflict victims. Neither is consonant with the spirit of transitional justice and their adoption was not guided by the objective to render justice to conflict victims by ending impunity. Hence, the conflict victims have rejected the very objective with which the government and major political parties unilaterally started transitional justice process. Since the very beginning, the conflict victims have distrusted the two commissions meant to deliver transitional justice – the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons – for their not being human rights-friendly and for going against the very spirit of transitional justice. Our distrust has been validated by the non-performance of the two commissions over the past four years, and today we regard the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons as having no relevance, purpose or utility.
8. In the event that the term of the two commissions is extended under the existing circumstances, the Government and political parties are hereby informed that the entire conflict victims community will be seek alternative recourse to justice. The demand is for both entities to be restructured on the basis of laws rewritten or amended with the consent of conflict victims. The commission(s) to be established thereafter must be impartial, independent, empowered and autonomous, with the goal of ending impunity and ensuring lasting peace through a transitional justice process that is transparent, gender-sensitive, inclusive and participatory.

9. Truth-seeking, justice and reparation for victims, prosecution and punishment for perpetrators, institutional reform, end of impunity and reconciliation – these are the core values of transitional justice as well as of the Comprehensive Peace Agreement (2006). The process to be initiated must adopt these core values of transitional justice. Any process or legislation that for the sake of expediency prioritises amnesty for perpetrators and undermines the principle of punishment for the offender and justice for the victim in the name of political consensus, transitional justice, reparation and reconciliation will be unacceptable to the victims of conflict.
10. It is the inherent right of conflict victims to know the truth behind the grave human rights violations perpetuated by both the State and rebel sides during conflict, and it is the responsibility of the State to make the truth public through a credible mechanism and transparent process. Hence, the truth needs to be established in a transparent manner through investigation by an entity that is trusted by the conflict victims. Establishment of truth through rigorous investigation lies at the very foundation of a genuine transitional justice process.
11. A broadminded National Reparation Policy is required to promote self-respect and self-reliance among conflict victims, incorporating their sentiments and including measures in education, health, reservation in employment and social security. Such a policy must incorporate United Nations guidelines on reparation, the Supreme Court judgments on reparation, and it must be adopted with the concurrence of conflict victims.
12. The conflict victims are agreed that social reconciliation is an inseparable part of the transitional justice process, while insisting that reconciliation must happen only with the independent and informed consent of the victims. Amnesty and reconciliation are not acceptable in the case of serious violation of human rights.
13. The Federal Government must, in cooperation with provincial and local governments, promote remembrance, archiving and memorialisation of victims of conflict through a national campaign, ensuring due recognition of the identity, dignity and standing of individual victims.
14. In the case of victims of rape, torture and sexual violence, immediate interim legal, medical and compensatory support should be provided upon preliminary investigation. Because truth-seeking in such cases of grave human rights violations tends to be complex, sensitive and related to the dignity of persons, it is essential to protect the

social persona of victims during investigations through gender-friendly process and policies, language and terminology. The reparation and compensation process should include legal aid and psycho-social counseling. It is fundamental that victims of grave human rights violations of this category receive justice and that the perpetrators are punished.

15. Article 5.2.3 of the CPA states: *“Both sides agree to make public within 60 days of signing of the Agreement information about the real name, surname and address of the persons 'disappeared' or killed during war and to inform the families accordingly.”* This provision of the Agreement is yet to be implemented, and conflict victims demand implementation and also that the status of disappeared persons be made public immediately. Given that there have been hindrances in transferring property from the name of disappeared persons to that of the inheritors, causing great financial, familial and mental distress, the Government of Nepal is urged to immediately take interim measures for the transfer of property from the name of a disappeared persons to the rightful heirs.
16. Article 5.1.8 of the CPA provides: *“Both sides express an understanding to create a record of government, public and private buildings, land and other properties that have been taken over, locked or otherwise sealed and to return them immediately.”* The conflict victims call upon the Government of Nepal, the then insurgents and security agencies to immediately coordinate with provincial and local governments to restore properties that are yet to be returned, by implementing the various decisions of Government of Nepal on the matter as well as decisions of the Supreme Court. The conflict era loss of property through arson or blasts should be evaluated and the owners compensated.
17. The personnel from security agencies, civil services, teachers and other public employees victimised by the armed conflict and their families should be brought into the stream of transitional justice, including justice and reparations.
18. The Government of Nepal must take full responsibility for children who lost their guardians during the armed conflict, and ensure access to higher education as well as psychosocial counseling for children victimised or otherwise affected by the conflict.
19. The Government of Nepal must provide medical treatment to those who were disabled or injured during the armed conflict, ensuring their livelihood through allowances.

20. The Government of Nepal is urged to ensure that heretofore undocumented conflict victims are documented and that they receive immediate interim assistance.
21. It is important to guarantee the security and confidentiality of the records and evidence pertaining to transitional justice being stored/documentated by the Government of Nepal, the National Human Rights Commission as well as other agencies and organisations.
22. The Government of Nepal is urged to address through special programmes the problems and concerns of combatants of the then rebel force who were discharged by the United Nations Mission to Nepal (UNMIN) during verification citing underage, outside recruitment standards, or late recruitment.
23. The conflict victims express their gratitude for the cooperation extended by civil society including human rights organisations, mass media, as well as the international community on transitional justice and earnestly seek their continued support in the days to come, in line with the roadmap offered by this Charter.

Wednesday, 21 November 2018

Kamaladi, Kathmandu