

3.5 Enforced Disappeared People of Bardiya District and Their Human Rights

Background

Conflict Victim's Profile prepared by INSEC demonstrates that there were 931 victims of enforced disappearance among which 823 were disappeared by the state and 108 by the then Maoist during the 10-year long armed conflict. The database shows that Bardiya remains as the district with highest number of disappearance victims (i.e 218). There are numerous concerns of the victims and their families related to their rights, livelihood, and socio-cultural issues which are the fundamental to this study.

Enforced disappearances is not just a crime against the disappeared persons but is also a crime against their families, friends and the society in which they live. The International Convention for the Protection of All Persons from Enforced Disappearance defines Enforced Disappearance as the forcible arrest, detention, abduction or any other form of action which excludes persons or groups from any kind of legal or policy protection. It is mentioned that such acts can be carried out by state bodies as well as an individual or group of individuals.

A documentation of enforced disappearance in Nepal is available since the disappearance of Ram Prasad Rai in 1951. Justice in the cases of disappearance is denied since the disappearance of Rudra Bhattarai of Ramechhap in 1960. The truth identification and justice re-

mains undone in the incidents of the disappearance of Bhuvan Lal Thapa Magar of Ramechhap in 1992 and Prabhakar Subedi in 1993 after the restoration of democracy in Nepal.

The government formed an investigation committee after the campaign of human rights defenders to find out the situation of the enforced disappeared persons in the movement for democracy in 1989, and events and process relating to the democratic movements. Prakash Kafle, the contemporary Secretary General of INSEC, was appointed as a member of the committee in the efforts of Citizens' Campaign. Even though the committee published the details of enforced disappeared victims (five of the 35 victims were killed) it could not established the fact and provide concrete recommendations for the assurance of justice.

The conflicting parties were to be held accountable for their forcible actions against disappeared persons during the armed conflict in accordance with the Universal Declaration of Human Rights, international humanitarian law and the basics principle and norms of human rights. Conflicting parties expressed their commitment through the Comprehensive Peace Accord to reveal the real names, surnames and addresses of the disappeared persons within the 60 days of the agreement, inform the families regarding the truth, and form a mechanism for the truth identification, reconciliation and

transitional justice. Weak legal arrangements and lack of accountability mechanisms hindered the efficient functioning of thus formed commissions.

Bardiya district has the highest number of enforcedly disappeared persons. The cycle of psychosocial stress of the victims families in this district is saddening. Hundreds of people and their families have been displaced in Bardiya. The issue of property transfer is often prioritized as one of the major legal problems faced by the families of disappeared persons. The children of the disappeared persons have become helpless, deprived of proper care and education.

Even after the 15 years of the Comprehensive Peace Accord, truth regarding the victims of enforced disappearance has not been established yet. The conflicting parties have been collaborating to govern the state, however, no concrete initiatives have been taken for the structural reforms for identification of truth and assurance of justice.

After the change in political regime, the political parties ignored the concerns of human rights violation of people who fought for the change. The failure of the transitional justice mechanisms in publishing the report of their investigation and make necessary recommendation for the assurance of justice and reparation, even after the extended tenure has further intensified the challenges and problems in the victim's families for exercising of Economic, Social and Cultural rights. Even after 15 years of Comprehensive Peach Accord, the victim's families have been facing difficulties in acquiring the properties in the name of disappeared persons, due to the legal barriers.

Objective of the Study

During the collaboration with victim's families and communities, INSEC noted concerns of transfer of property, psycho-social condition of the victims'

families and prevailing injustice as three major problems faced by the families of conflict victims. Non-fulfillment of the commitments delivered through the Comprehensive Peace Accord regarding the victims' rights is a matter of shame for the political parties and their leader. This study on the issue of disappeared persons intends to advocate for the justice of the victims by shedding light upon the economic, social, cultural, and legal problems faced by the victims' families and question the accountability of the state.

Methodology

The study is based on the primary and secondary sources of information and data. The primary sources are interviews and discussions with conflict victims, their families, organizations, and stakeholders. The secondary sources are INSEC's Conflict Victims Profile, the report on the Commission of Investigation on Enforced Disappeared Persons, Nepal, media coverage, and report related to Conflict-Related Disappearance in Bardiya District published by United Nations Office of High Commissioner for Human Rights (OHCHR).

Problems and Concerns of Disappeared Victims in Bardia District

The Commission of Investigation on Enforced Disappeared Persons, has not been able to publish report of investigation and recommend for legal action against the perpetrators, reparation to the victims and institutional reform for the assurance of non-occurrence of the incidents in the future. The commission collected the complaints, however, no information was disseminated publicly regarding the investigation and other procedures. Even after seven years of its establishment, the commission has not yet conducted a thorough investigation on the complaints filed by the victims' families.

The elderly parents, wives, and children of the victims have experienced the pain of losing their loved ones during the 10-year long armed conflict. They have been facing different forms of social, economic, and psychological problems. Amid this, the families of the victims have been helplessly visiting different authorities in the search of their relatives. Based on discussions with the victim's families and stakeholders, this study has identified the following concerns and problems.

4.1 Legal Problem in the Use and Transfer of Immovable Property

The victim families face legal problems in using the immovable property of the disappeared persons as their legal rights. This has created legal barriers in the exercise of economic, social and cultural rights to the victims' families. In joint families, this has also caused problems and obstacles, mainly in the partition of the land among brothers of the disappeared. As a result, the victim families are deprived of most of the fundamental rights provided by the state due to the absence of economic rights and stability. Notably, most of the families of the disappeared have been deprived of the right to property use. This has further added suffering to the families of the disappeared.

According to Chapter 11 and Section 40 of the Civil Code and Section 26 of the Land Act, 2021, it is mandatory to submit the death certificate to acquire the movable and immovable property of the disappeared persons. Their families must present the date, place, and cause of death to get the order of legal declaration of death. The inability to transfer the property to their owners as per the legal provision compels the wives and children of the disappeared to live troublesome and miserable life against their personal will.

Bujhauni Tharu, aged 40 and an inhabitant of ward number 4 of Thakur Baba Municipality, has faced many problems in the use and transfer of property due to the enforced disappearance of her

husband Khusi Ram Tharu. As per the legal provision, land ownership of the joint family could only be transferred to the ownership of her husband (male). It is uncertain whether her husband is alive or dead; no party tells her about the whereabouts of her husband. To register her husband's death certificate, she has neither the dead body nor any other proof. Other members of the joint family have started to live separately and have persistently pressurized her for the partition of the land of joint ownership. Khusi Ram Tharu had been taken into detention by the group of armies, who had come from the camp of Nepal Army located at Thakurdwara by confining him to Godana of ward number 3 of Thakur Baba Municipality on March 11, 2002. The army has not given any information about his whereabouts yet.

Paniya Tharu also has a similar story to that of Bujhauni Tharu. Her husband Dhamu Tharu had been taken into detention by the group of armies, who had come from the camp of Nepal Army located at Thakurdwara on April 10, 2002. They had asked him to go with them by saying they had some task with him. Nobody knew why the Nepal army took him away; where they took him and what they did to him. He has also not been seen ever since, and nobody says anything about his status. Bujhauni and Paniya are only the representative persons among the victims, who have been facing legal and other problems. Many women like them are suffering from this problem.

Dev Narayani Tharu, aged fifty-six and an inhabitant of Hari Nagar, ward number ten of Rajapur Municipality, is a freed bonded laborer with a red identity card. Her husband Chhunuwa Tharu was arrested and taken into detention by a group of Royal Nepalese Army on October 20, 2002 while working on his farm. His status is also unknown to date. Dev Narayani immediately went to security authorities to know the situation and whereabouts of his disappeared husband,

firstly alone and later with the help of human rights organizations. It has now been eighteen years since her husband disappeared, but there is no information about his situation.

She was deprived of land ownership and other facilities when the government claimed that the rehabilitation of freed bonded laborers was in its last phase because she failed to make the physical presence of her husband. When she requested the Office of Land Reform, Guluriya to transfer the land ownership to her, they replied that Chhunuwa had to be physically present himself to the office or she should present his death certificate. But Dev Narayani strongly believe that her husband is still alive. Her heart could not accept to register for his death certificate. She has not stopped waiting and looking at the road towards which the army had taken her husband. She still has a faint hope that she will get to see her husband.

As per the legal provision, for a wife and close relatives to acquire the right of movable and immovable properties in the ownership of her husband, the owner should physically present himself to the office or should appoint someone as the inheritor or his death certificate shall be submitted. Regarding the enforced disappearance during the armed conflict, family members of the victims of enforced disappeared are compelled to face unending suffering due to the failure of the state to provide timely and reasonable information about the status of disappeared person.

As provisioned in Article 25 of the Constitution of Nepal, the right to property is one of the fundamental rights. However, due to the general assumption of property inheritance, while formulating the laws relating to the same, it has largely affected the right to property of the victims' families.

4.2 Restrictions in Social and Cultural Participation

Most of the families of the disappeared are facing face immense economic, social, and cultural obstacles. The income of most of the enforced disappeared people of Bardiya comes from agriculture, in which adult male house leaders had a decisive role. Their enforced disappearance has added more economic, social, and cultural problems in their families. Since the families of the disappeared could not get their death certificate without indisputable proof of their death, they are deprived of the right to transfer of land and other property rights they are entitled to. This has prevented the victims from making legal transactions of their land assets.

Hukum Bahadur Shahi, husband of Jayanti Shahi, aged 42, and an inhabitant of Sutaiya, ward number four of Thakur Baba Municipality, was arrested, kept in detention, and disappeared on April 6, 2002 by a group of armies of Barakhdal squad located at Thakurdwara. His status is unknown till this date. Even after nineteen years of her husband's disappearance, Jayanti Shahi has not lost her hope that her husband will return to home one day. However, the behavior of her family and society towards her has drastically changed while she is desperately waiting for her husband to come back. They have started to pressurize her to perform his last rites, believing that he has long been dead, and if not, he would undoubtedly have already returned.

Since she has not given up wearing red clothes and vermilion powder without performing his last rites, she has been accused for all the bad incidents like accident of the family members etc. That occurs in the family. In some families, the victims reported that the mother of the disappeared challenged to perform the last rites of her son herself. Phaklu Tharu, aged 38 years, and husband of Beli Tharu, an inhabitant of Mahuwa, ward number 6 of Rajapur Municipality, was

arrested on October 24, 2002 by combined security force as he was alleged of being Maoist, and disappeared with the action of the army. His whereabouts are still unknown. Beli, who has brought up her two sons, has also been forced by her family to perform the last rites of her husband. If any mishap occurs in the family or if anyone gets sick in the family, Beli is accused of those misfortunes as she refuses to perform the last rites of her husband because she has not received any reliable information about him. These are some of the representative examples.

4.3 Compulsion to Follow Traditional Cultures and Rituals

Tharu communities, in the past, had a tradition where the younger brother-in-law would get married to the widow of his own elder brother. This tradition was out of practice for some time. But during the armed conflict, this practice was promoted again. This practice is solely against the principle of women's rights and human rights in general. In the Tharu community, there are some cases of the widows or the wives of the disappeared getting married to men outside their family lineage. According to Conflict-Victim Women Network, six wives of the disappeared have married their younger brother-in-law in Bardiya.

4.4 Pressure to Perform Last Rites of the Disappeared Persons

Wives and families of the disappeared persons have been continuously pressurized to perform the last rites of the disappeared accepting that they are dead.

4.5 Increase in Death Registration

Wives and families of some of the disappeared persons have been forced to register their death to get the ownership of moveable and immovable properties of the disappeared and to get some facilities provided by the state. In some cases, they have registered deaths against their will

due to the inability to bear family and social pressure.

4.6 Problems faced by the Children of the Victims in Their Higher Education

The cases of enforced disappearance have affected the victims' access to justice. More than this, it has negatively affected their economic condition. Those kids at the time of enforced disappearance have now grown up to their adulthood; their education and upbringing expenses have surged up, and the government has not given anything more than merely one million rupees as consolation. They cannot register the death of the disappeared person as they have not given up on their hope of seeing the disappeared person one day. This has created legal obstacles for them to use and transfer the fixed property.

The Commission of Investigation on Enforced Disappeared Persons, Truth and Reconciliation Act, 2015 has not mentioned anything regarding the use and transfer of immovable property of the disappeared persons. It has the scope and rights to investigate the status and position of the disappeared persons and make necessary recommendations to the government in order to ensure justice to the victims. The General Secretary of the National Network of the Families of the Disappeared says that it is direly necessary for the government to issue directives that should enable the families of the disappeared to use and transfer immovable property, mainly land property, of the disappeared persons.

4.7 Distribution of Identity Card and Expectations of the Victim Families

The government has started to provide disappearance victim identity cards to the families of the disappeared as a basis to address severe problems regarding economic, legal obstruction, education,

and health issues faced by disappearance victim families. The government started to provide disappearance victim identity cards from Bardiya district in 2021. So far, 790 people of the families of the disappeared have been provided with identity cards all over the country.

Since the Commission of Investigation on Enforced Disappearance has not been able to complete its investigation of the disappeared within the stipulated time, the government claims that they are implementing compensation programs through all three levels of government by providing the victim families with disappearance victim identity cards to address the problems faced by them in their everyday life. However, the distribution of the identity cards by the Commission is quite slow. The government hasn't decided on what sorts of compensation programs the government is planning to implement, and when they are going to implement the same.

Conclusion

The complete and clear situation and status of enforced disappeared persons in Bardiya district during the armed conflict is still unknown. The families of the disappeared have not given up their hope that their relatives may return someday. The belief was that the peace process would complete, and victim families and the nation would come out with a solution to this problem. Neither of the conflicting parties has given due concern to this issue. The victim families are deprived of their rights to know the truth about the incidents of human rights violations and atrocity during the armed conflict.

Delay in knowing the truth about the incidents has caused the disappeared persons' families to suffer the most. Due to the inability of the Commission of Investigation on Enforced Disappeared Persons to complete an investigation regard-

ing the whereabouts of the disappeared, families of the disappeared are entangled with economic, social, cultural, legal, education, and health problems they are facing every day. The government has been continuously ignoring their human rights and has been averting from its responsibility towards the rights of disappeared persons and their families.

Recommendations

- ▶ It is essential to recognize the enforced disappeared persons as 'legally absent' and provide them with intermediate relief assistance. It is further necessary to actively contribute to end impunity.
- ▶ Ensure the proper identification of the social and livelihood problems of the victims and enhance the accountability of the local and provincial governments for responding them properly.
- ▶ There is a need for the facilitation to use the property by the families of the victims since the law on inheritance of property only enshrines a general provision, which has greatly affected the property rights of victim's families.
- ▶ The Commission for Investigation of Disappeared Persons, Nepal, is less effective in demonstrating the evidence of investigation and recommendation which only adds up to the long-standing impunity. There is a need for joint advocacy of the victims, human rights organizations and the international community with the concerned stakeholders for legal reform and performance of the transitional justice mechanisms.
- ▶ To end the status quo of transitional justice, the advocacy initiatives shall be facilitated to create pressure on the political leaders.
- ▶ The state should provide compensation and social security to the wives and dependent children of the victims of enforced disappearance.

