

## Listening to Survivors of Conflict-Related Sexual Violence in Nepal: Would It Ever Happen?

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**Abstract:** A theory of listening that entails openness, receptivity, attentiveness, and responsiveness shifts the onus for action onto the listener from speaker and undertakes listening not only as a process, but also as a substance. Listening to survivors in the cases of violence goes beyond hearing their experience, and taking seriously the justice interests of survivors as legal and political subjects. However, the survivors of Conflict Related Sexual Violence (CRSVs), caused in Nepal during the decade long armed conflict (1996-2006), have never been listened to for their voices and sufferings. Far from 'substance', they have neither been heard nor provided interim relief to which all other categories of survivors of the armed conflict were entitled to. The second National Action Plan on Women, Peace and Security adopted in Nepal in 2022 has opened a possibility to listen to the CRSVs as it has included them officially for the first time. However, in reality they cannot be listened until the stakeholders move beyond tokenism to making their participation effective. It requires capacitating, providing psychosocial support, and assuring response to overcome any possible stigmatisation. The article concludes that listening to CRSVs requires a survivor-centric comprehensive approach, which includes i) work, education and good health to exercise their right to participate; ii) avenues and spaces for effective, full and meaningful participation; iii) skills for effective engagement together with the willingness of the state to open up decision making and a prudent action of all stakeholders on which the survivors can fully trust.

**Keywords:** Survivors, Conflict-Related Sexual Violence, Nepal, Women, Peace, Security, National Action Plan, Survivor-centric



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### 1. INTRODUCTION

Listening entails actively hearing what others are saying, understanding their messages and responding as appropriate either in word/sign, behaviour or action. Dreher and Mondal (2018) take "openness, receptivity, attentiveness, and responsiveness" as the genesis of the theories of listening. These qualities within the theories of listening are closely related to democratic participation and citizenship. In the case of violence survivors, listening goes beyond hearing their experience, and taking seriously the justice interests of survivors as legal and political subjects (Ailwood et.al, 2022). In general, voices against cultural,

political and legal barriers in responding to violence against women call upon the state to listen to their voices to foster meaningful changes that acknowledge the harms first, and aim at preventing violence. Therefore, Ailwood *et al.* (2022) claim that the attention to voice, participation, representation and recognition is insufficient to the necessity of response, as the listening requires not only reaction, but also prevention. This way, the theory of listening shifts the onus for action onto the listener from speaker. Therefore, listening is counted not only as a process, but also as a substance.

The cost of not listening is always high as it may pose threats to survival or lacks the possibility

to prevent occurrence, reduce substantial damage, or gain a larger benefit. In the case of survivors, Ailwood et. al (2022) even suggest that continuous failure in listening to them results in epistemic violence. Despite this reality, the survivors of Conflict Related Sexual Violence (CRSVs) in Nepal have never been listened to for their sufferings and voices during the decade-long armed conflict (1996-2006). They have been tolerating not only the trauma of physical abuses, including rape, during the conflict but also the current mental distress and social abuses. Existing socio-economic challenges have aggravated their sufferings and distress. Many of them fear opening their mouth as revealing their sufferings could even damage their existing family and social life. (CRSV survivor in an FGD held on 18 January 2022). Since they have not been listened, they have neither benefitted from any interim relief provided to ‘all’ categories of survivors, nor have they ever been a part of any peace building effort initiated in the aftermath of the conflict.

In order to make the CRSVs heard and listened, it is not sufficient only to invite them to participate as survivors or conflict-affected people. Due to the complex nature of their problem and associated social and psychological taboos, pressures and potential threats, they need a more delicate approach, safe space, full assurance of listening to them and their confidentiality (Aroussi, 2020). Until being assured of a conducive environment, they can never be listened to as they cannot participate effectively, as suggested by Pena and Carayon (2013), far from giving them a voice, healing them through positive engagement in the process, and repairing the harm they suffered.

Sexual violence is defined as ‘a broader category that includes rape, coerced undressing, and non-penetrating sexual assault’ (Wood, 2006).’ On the forms of sexual violence the UN Guiding Note elaborates ‘conflict-related sexual violence takes multiple forms such as, rape, forced pregnancy, forced sterilisation, forced abortion, forced prostitution, sexual exploitation, trafficking, sexual enslavement, forced circumcision, castration, forced nudity or any other form of sexual violence of comparable gravity.’ Cohen *et al.* (2014) on Sexual Violence in Armed Conflict dataset define the following seven distinct forms of violence under the category of ‘CRSV’: (a) rape, (b) sexual slavery, (c)

forced prostitution, (d) forced pregnancy, (e) forced sterilisation/abortion, (f) sexual mutilation, and (g) sexual torture.

In Nepal, the Second National Action Plan (NAP-II) on the UN Security Council Resolutions including 1325 and 1820 (adopted on 22 August 2022) defines:

Sexual violence related to conflict means any sexual harassment that may have been enforced during the conflict. The term includes forcible sexual acts, forced sex, forced conception and abortion, the uses or behaviour of pornographic words, the nudity and trafficking, forced marriage or act against sexuality of any person. The term will also denote all forms of sexual violence against women and girls with or without consent.

As suggested by Cohen et. Al. (2014), the term ‘CRSV Survivors’ in this Article denotes: i) those who sustained one or multiple forms of sexual violence/harassment caused during the armed conflict period in Nepal inflicted in the form of forcible sexual acts including rape, sexual enslavement, forceful pregnancy, forceful abortion, sexual exploitation, sexual torture, forced nudity, non-penetrating sexual assaults, act against sexuality of any person, including humiliation and improper sexual comments, or any other forms of sexual violence of comparable gravity causing physical, mental or social distress to the survivors in a short and longer term; ii) family members, such as parents, children or partners (close relative missing), including extended family and kinship of the CRSV survivors; iii) children born out as a result of pregnancy from rape; iv) persons who depend on the victim of sexual violence; and v) others being victims as a consequence of the harm inflicted through the violation.

In terms of listening to the CRSV survivors in Nepal, the year 2021 and 2022 have remained crucial as they were acknowledged officially in any peace building effort. While developing the Second Phase of National Action Plan (NAP) on the UN Security Council Resolutions (UNSCR) 1325 and 1820 – the Women, Peace and Security agenda, the government of Nepal has held series of consultations with CRSV survivors as well in 2021. Similarly, in 2022 in an attempt to amend the Transitional Justice (TJ) laws (Truth and Reconciliation Commission (TRC) Act

and the Commission of Inquiry on Enforced Disappearance (CIEDP) Act, the government of Nepal has held specific consultation with CRSVs. Furthermore, in the year 2021 some of the survivors of rape caused during the conflict periods also exposed themselves and demanded justice under the leadership of a former Member of Parliament Ms. Devi Khadka, coordinator of the National Organisation of Conflict Rape Victims in Nepal. CSOs have also continued documenting the cases of CRSV survivors (Budhathoki, 2022).

## 2. RESEARCH QUESTIONS AND THE METHODS OF STUDY

Some of the CRSV survivors breaking their long silence, despite the constraints that they have, indicates how desperate they were to be listened. From this perspective, the adoption of NAP-II in August 2022 is definitely an important step forward as it has formally acknowledged the prevalence of sexual violence survivors, CRSVs, and their voice being an integral part of the conflict resolution processes in Nepal (Section 7.1, NAP-II). It also requires detailed participation of CRSVs in the peace building process. However, the question remains unanswered: Would all these efforts ensure listening to all CRSVs? If not, in which sense and which category of the CRSVs might not be listened to and how could they all be better listened? These two questions have guided the entire study related to this article.

Based on the analysis of available literature, the article has tried to find responses to these questions. Principles defining the rights of CRSVs, and practices in other countries as well as the constraints and challenges sustained in other contexts have guided this effort to analyse the responses and identify the potential way forward. A Focus Group Discussion (FGD) held with CRSVs has also provided specific references for suggesting a possible way forward for listening to the CRSV survivors better.

## 3. THE OBLIGATIONS OF LISTENING TO CRSV SURVIVORS

Listening to survivors provides information necessary in the conflict resolution process. Since a conflict resolution has to address both causes and consequences of a conflict, the survivors alone can provide the details of incidents that had happened,

and the consequences and impacts caused by the incidents. This way listening to survivors helps to identify and introduce an appropriate approach and means to respond to their needs in the short term and resolving the conflict and any possibilities of its recurrence in the long run.

Listening is also a means to healing survivors in the short term. Physical and mental pain and suffering due to the CRSVs and post-violence consequences include aggravated miseries and sufferings in present life, trauma, mental distress and the feeling of retaliation. As suggested by Aroussi (2020) listening to and assuring the survivors with some immediate response helps them to build on their confidence and participate effectively and meaningfully in the peace building process.

Absence of listening to the survivors of CRSV and their families could cause serious harms to them as they experience short and long-term physical, mental and economic impacts. Elmusharaf *et al.* (2019) illustrate physical health impacts ranging from immediate injuries to longer term disabilities and effects on sexual and reproductive health, including the need to go for longer term medication. Men, women, boys, and girls are affected differently based on their gender and age, among other factors. Mental health impacts for survivors vary, including but not limited to anxiety, depression, post-traumatic stress disorders, and even suicide. CRSV also has negative economic impacts through loss of productivity, increased care work, costs of seeking and procuring services, and the effects on household consumption and poverty.

Conflict resolution requires first listening to the parties in a conflict, including conflict affected people and victims – hereafter referred to both as ‘survivors’. Listening to all makes any conflict resolution process comprehensive and complete (Babbitt, 2009). While signing peace agreement in the aftermath of a conflict and peace negotiation, generally the warring parties conclude to resolve the conflict based on the interest represented by their hierarchies or mediators. However, the survivors’ concerns hardly acquire any space unless the warring parties agree on putting them as a benchmark. Even when they agree to include survivors’ concerns, the negotiating parties hardly refer categorically to the issues of survivors of CRSVs (Guidance Note 2014). Peace negotiations and peace agreements seem to be

ignoring the CRSV issues as the cases are caused by both the sides of a conflict and the negotiating parties or their hierarchy fear of being held accountable for the cases. Even mediators do not put the CRSV issues up front as they fear of the issues spoiling any peace negotiation. In fact, the ignorance of all parties in peace negotiations is exactly the reason why the issues of CRSV survivors are more critical to any conflict resolution process.

Considering the need and significance of listening to survivors, various international and national normative frameworks have precisely required them to be listened. The UN has recognised and obliged its member states to integrate the gender and CRSV issues in any peace negotiation and peace agreement (Guidance Note, 2014). It was followed up further by other mechanisms, such as the European Council (2022), which has stated - a substantial increase in women's leadership and participation in all aspects of peace and security is necessary not only for the sake of human rights and gender equality, inclusive governance and social cohesion, but also for the sustainable resolution of conflicts and crises. (Council conclusions, 2022). However, many of the peace negotiations and agreements held after the UN obligatory provisions, have not addressed the CRSV issues. None of the peace building initiatives so far seem to be addressing the issues of CRSVs as an essential factor for successful conflict resolution. This way, the CRSV issues remain under-represented and unaddressed in any peace negotiation and peace agreement. The fact is that there is a lack of endeavour in addressing CRSV issues and this can neither sustain nor resolve a conflict in substance. Therefore, the article has focused on digging out the significance of listening to CRSV survivors for addressing their issues and examining the ways through which they could be listened better.

#### **a. International Requirements**

The inalienable right to the truth, recognised by the UN Human Rights Council, has been defined under Principle 2 of the UN Updated Set of Principles for the protection and promotion of human rights through action to combat impunity (UN Impunity Principles) as follows:

“Every people has the inalienable right to know the truth about past events concerning the

perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.”

Principle 4 affirms that “[i]rrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.”

Various efforts have been made to address the particular concerns of CRSVs. They include the UN Secretary General's guidance note (2014) to include the CRSVs in any peace negotiation and peace agreement. The UN has also passed various resolutions including the UNSCR 1325 and 1820, which have precisely asked for addressing the CRSVs issues in each peace building process. Following these two categories of the UNSCR related to the Women, Peace and Security Agenda, there are other precise UNSCR conclusions including the UNSCR 2467. They provide specific references for advocating on behalf of CRSVs by applying survivor-centric approach.

Section 10 of the UNSCR 1325 ‘Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict’. UNSCR 1820 on Women and Peace and Security (2008) condemns the use of sexual violence as a tool of war, and declares: “rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide”. The resolution also stresses the need to exclude sexual violence crimes from amnesty provisions in the context of conflict resolution process. This resolution has explicitly noted that sexual violence is often used or commissioned as a tactic of war against women and girls and may impede the restoration of peace and security. They also cause physical, mental or social distress to the survivors in a shorter or longer term. This may be the reason why the UN guidance note has referred to the possibility of the CRSVs constituting as a war crime, a crime against humanity, genocide, torture or other gross violations of human rights’ (UN, 2014). This

way the UN Security Council Resolutions have precisely asked to listen to CRSVs and allow no excuse.

### **b. National Requirements**

Nepal's TRC Act includes the crimes of rape and sexual violence as serious human rights violations. Section 3 of the TRC Act mandates the Commission to investigate the truth about such crimes and make recommendations for legal action against those who were involved in these grave offences. The Act also requires the Commission to facilitate reparation with the ultimate goal of fostering reconciliation between perpetrators and victims. However, the TRC Act has narrowed its focus while defining serious violations of human rights, including rape and other sexual violence. For example, the TRC Act defines many acts, including rape and sexual violence, as "serious human rights violations" which were committed in the course of armed conflict directed against unarmed persons or the civilian population or committed systematically. This definition limits the mandate of the TRC to investigate "rape and sexual violence" cases as "serious violations of human rights," targeting "unarmed persons" or the "civilian population," "in a systematic manner during the course of armed conflict."

Following the adoption of NAP-II in Nepal the definition of the CRSVs has now broadened up. Section 14.E of the NAP-II (2022) defines : "Sexual Violence Related to Conflict" means any sexual harassment that may be forced during the conflict, the term includes forcible sexual acts, forced sex, forced conception and abortion, the uses or behaviour of pornographic words, the nudity and trafficking, forced marriage or act against sexuality of any person. The term will also denote all forms of sexual violence against women and girls with or without consent. NAP-II has also required ensuring meaningful participation and having disaggregated data of the CRSVs, and providing relief and rehabilitation support to CRSVs.

## **4. CRSV SURVIVORS AND THEIR STATUS OF BEING LISTENED IN NEPAL**

All these facts have established that survivors of CRSVs need to be listened. However, in practice they are not listened. This is the reason why the UN Secretary General in his report on Sexual Violence (2019) states, "I urge the Government (Nepal) to

expedite the revision and adoption of the bill to amend the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, in line with its obligations under international law. He further states with precision, "I also call for a guarantee of interim relief and full reparations for victims of conflict related sexual violence, including health services, psychosocial counselling, livelihood support and adequate compensation."

Participants of the FGD confirmed that the gaps identified in the above-mentioned policies, programmes and actions are their present concerns and issue as well. They also said that the patriarchal mindset is the reason why the CRSV survivors have not been involved in any negotiation process and the CPA has not included precisely the CRSV issues despite the requirements of the UN guidance notes.

The processes practised in different countries also vary in terms of ensuring listening to the voices of survivors. While no specific process has been considered as comprehensive, the survivors and activists have been demanding listening to the voices of survivors of CRSVs.

In Nepal, the CPA signed in 2006 has mentioned addressing the cases of survivors of Armed Conflict, without referring to the issues of CRSVs. However, the peace building processes afterwards have not addressed the concerns of conflict survivors as such. The case of CRSVs is more complex, which has never been taken into account. In the meantime, Nepal adopted a National Action Plan or NAP on UNSCR 1325 and 1820. Following implementation of NAP for four years, the GoN has adopted NAP-II on the UNSCR 1325, 1820, and others. NAP-II has included a provision to form Palika level committees to address the concerns of CRSVs. However, the NAP-II implementation has not even commenced in real terms. This way, the CRSVs in Nepal have not been listened to at all, except in some formal consultations that have taken place in the year 2022 as a part of the consultation for amending TRC and CIEDP.

## **5. THE WAYS AND MEANS TO LISTENING TO THE CRSVS BETTER**

The only way to listening to the CRSVs better, including addressing their concerns, is to ensure their participation in the peace building processes. This is the reason why the UN documents have obliged its member states to categorically address the CRSV issues in all negotiations, peace agreements and peace building processes. Experiences of the

countries have revealed that simply including the CRSV survivors is not sufficient for listening to them. In this context, the ‘survivor-centric approach’ introduced by the UNSCR 2467 has helped to fill the gaps in terms of addressing the issues of CRSVs. Clark (2021) elaborates that the survivor-centric approach has called upon connecting the disconnects between elite-driven processes of dealing with the past on the one hand, and the needs and priorities of victims and communities directly affected by conflict and human rights abuses on the other. Furthermore, CRSVs have to be treated differently due to their particular concerns and constraints compared to other survivors. Like other marginalised communities and groups, the CRSV survivors need to be capacitated and supported so that they could have effective participation in substance. Therefore, a full, effective, and meaningful participation is a must to ensure that CRSV survivors are listened sufficiently.

Ensuring the participation of all CRSV survivors is a huge challenge, as they do not want to reveal themselves as survivors owing to the social and familial stigma associated with the tag. So, creating peer-to-peer safe spaces is suggested as an effective approach to ensuring participation and listening to the survivors better (Tearfund, 2017). During an FGD, the survivors also suggested that they feel more confident to reveal themselves if their sacrifices and sufferings are acknowledged as an important contribution to the political transformation and in building the society. They also expected the society respecting them for their confidence to live and come forward despite all the sufferings and constraints that they had gone through. However a thorough research is needed to ascertain that these approaches are sufficient to ensure participation of all survivors and having them heard.

## 6. CONCLUSION

Listening is shifting the onus of action to the listener from speaker. The theory of listening requires “openness, receptivity, attentiveness, and responsiveness” of the listener. In this respect, listening to survivors of sexual violence caused during the armed conflict requires taking seriously the justice interests of survivors as legal and political subjects, acknowledging the harms, and preventing the violence.

Participation of the CRSVs as required in the UN Security Council Resolution 2467 may be the only way to ensure listening to them. However, in order for them to engage in effective, full and

meaningful participation, they require a conducive environment, where they feel safe, repose trust and show confidence, as the environment will be devoid of any potential repercussion, intimidation and stigmatisation afterwards. Such an environment includes actions for capacity building, psychosocial support, and assurance of the participants that they will not be stigmatised, instead acknowledged and compensated, based on their stories.

The second phase of the NAP, that is, NAP-II, is definitely an important tool as a confidence building measure in Nepal. However, more important is its prudent implementation. Amidst the lack of effective implementation of other normative frameworks, the CRSV survivors, during the FGD, suspected the chances of NAP-II being implemented and their voices heard sufficiently. The sub-committees to be formed at each Palika level could be an important step in terms of listening to the survivors. If the committees already collect the data and facilitate the process to respond to and deliver on the needs of survivors that may be a confidence building measure for the survivor.

In order to listen to the survivors better, it is equally important that the authorities start acting upon responding to the immediate concerns of victims. In the meantime, the TJ mechanisms also need to be functional to ensure addressing them under the four pillars of the TJ – Truth telling/documentation, bringing in the perpetrators into justice, reparation of the damages caused to the survivors and guaranteeing non-recurrence. This way listening to survivors requires a comprehensive approach and a prudent action of all stakeholders in which the survivors could fully trust upon.

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