



General Assembly

Distr.: General
27 August 2014

English only

Human Rights Council

Twenty-seventh session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 August 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).



NEPAL: Pressure needed in support of women forgotten in transitional justice process

1. In the recent past, the Asian Legal Resource Centre (ALRC) and its sister organization the Asian Human Rights Commission (AHRC) have continued to highlight myriad problems in the substance of the Truth and Reconciliation (TRC) Act passed by government of Nepal. However, given the nature of the violence during Nepal's insurgency, and given who continue to suffer the most without justice, the plight of women vis-à-vis the transitional justice system has received insufficient attention.
2. There are an estimated 1,023 women who were murdered and 6,000 who lost their husbands, both at the hands of insurgents and the State, during the 1996-2006 armed insurgency. It has been estimated that over 15,000 people were killed, 3,000 were forcefully disappeared, and many more were injured. According to Informal Sector Service Center's (INSEC) report, around 101 women were forcibly disappeared during the insurgency in Nepal, of which 8 had disappeared by the Maoists, the rest by the State. However, exact facts and figures are not yet available.
3. The conflict also witnessed gender specific violence against girls and women, including, among other forms, rape and sexual assault. Sexual violence was largely used as punishment for alleged connection with the opposing side, though women were targeted with other forms of violence and torture as well by both the State and the rebel Maoists. In some cases, women who were impregnated could not find safe abortion services, as health posts were destroyed during the insurgency. The effects of this have yet to be properly documented, let alone addressed.
4. These special circumstances are an important reason why gender violence and the rights of women are often given special attention. However, the TRC law, among its other flaws, does not have any strong provision of punishment for crimes committed against women. There are no concrete plans and policies for institutional reform in order to allow women greater access to justice. There is no guarantee of privacy during the justice seeking process. There is no strong punishment for the crime of rape. There is no remedy for women who have become pregnant following a rape as a result of the insurgency. None of these crimes have been classified properly; the different related crimes are flatly termed as rape. Thus, the risk that they are not treated with sufficient care, or that they are overlooked entirely, is too great to accept; it must be resolved before the TRC can be effective.
5. Furthermore, according to Nepali law, there is a 35 days statutory limitation within which rape can be reported. This limitation is outrageous and needs to be re-examined. It was practically impossible for women to report rape and sexual violence committed during the turmoil of insurgency, especially given the authorities receiving the complaint may well have been sympathetic to the cause of their attacker. This limitation needs to be specifically addressed by the TRC so women can come forward and report rape and acts of sexual violence committed during the conflict.
6. An added difficulty for women coming forward to report crimes committed during the conflict period is ostracism. Thus, it is the responsibility of the government of Nepal to maintain privacy and social security of conflict victims, especially if they are women. Otherwise, no woman will tell her story, and few will ever be able to achieve closure or justice.
7. There are many women who were displaced, widowed, and abandoned, both during and after the insurgency. Many have been living with the pain of losing their loved ones, including children, to death, disappearance, or displacement during the insurgency. The TRC process needs to be able to address these issues as well. The mothers and wives must be allowed to speak as the children's and husband's voices can no longer be heard. They should be allowed to fully participate in, and benefit from, the peace process in Nepal.
8. There is a provision in the TRC Act to have at least one woman in the five members TRC Committee. Such a female member, with adequate education and expertise, should be nominated. However, one of the members nominated, Sapana Pradhan Malla, said she would not join the Committee, as the TRC law has not been drafted as per international

standards and also violates the Supreme Court directive of 2 January 2014. Therefore, at present, there is no female representative on the TRC nomination committee. This is a serious lacuna.

9. The government of Nepal knew well before the TRC Act was drafted that serious human rights violations cannot be granted amnesty. The National Human Rights Commission of Nepal and the Office of the High Commissioner for Human Rights (OHCHR) had submitted recommendations to the government of Nepal before the TRC law was passed that serious human rights violations cannot be granted amnesty according to international and humanitarian law. But the government ignored all such recommendations, and also those recommendations submitted by the government's own expert panel.

10. Article 26 (2) of the TRC law states that the Committee cannot grant amnesty to perpetrators of rape and those acts for which the Committee thinks amnesty should not be granted. The law, however, has it that the Committee can recommend amnesty for other human rights violations. And, Article 26 (5) allows the Committee to grant amnesty with victims' consent and on the basis of their discretion. As noted above, it appears that most gender-based violence may be categorized as "rape", which should exclude it from the possibility of amnesty. However, because of the lack of an explicit definition, it is a reasonable fear that, in practice, all gender related violence other than rape would be reclassified. This is possible because, if the reporting rule is exercised, many of the gender violence cases will not meet the requirement. Thus, it amnesty can apply to any gender-based human rights crimes that the TRC examines. This is a loophole that could be used by the Committee to grant mass amnesty. Victim consent in this regard means nothing. The victim could be threatened and consent obtained for amnesty without difficulty. The Supreme Court has already pointed out this loophole to the government.

11. In terms of the TRC Act, being a state party to the United Nations, if Nepal denies the objections and criticisms, it will be tantamount to Nepal standing apart from the international community. It is a breach of international law and standards to disregard the plight of women and to ignore national and international calls to amend the TRC Act. A state dependent on international support and financial assistance can only prolong and compound suffering by dismissing valid criticism. It is not a good sign for the peace, prosperity, and future development of Nepal with regard to gender equality, or even simply as a nation hoping to establish the rule of law.

12. The peace process needs to be brought to a logical conclusion. There is no way other than taking a firm position in contributing to address impunity, promoting equality, and strengthening the rule of law in the country, pre-requisites for sustainable development in Nepal.

13. Therefore the ALRC requests that none should support the transitional justice mechanisms until they conform to international standards, especially with regard to gender violence. The TRC Act must be amended after meaningful consultation with victims, families of victims, including women, members of civil society, and the National Human Rights Commission, at the very least.