



General Assembly

Distr.: General
20 February 2017

English only

Human Rights Council

Thirty-fourth 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.

[13 February 2017]

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

GE.17-02594(E)



* 1 7 0 2 5 9 4 *

Please recycle



Nepal: Speed up Transitional Justice Process

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council (UNHRC) to the transitional justice process in Nepal. Please note the lack of amendments to the Transitional Justice Acts. Additionally, enactment of particular, necessary laws is needed. There is a shortage of funds and human resources to accomplish this process.

Two years ago, a mandate for The Truth and Reconciliation Commission (TRC) and the Commission of Inquiry on Enforced Disappeared Persons (CIEDP) was promulgated to investigate conflict-era cases. Their two-year mandate was extended on 9 February 2017 for one year. With this one-year extension, Commission members and conflict victims will continue to face confusion and uncertainty.

The extension will not be of much help, as the two commissions are constrained by the lack of required legislation. Before extending their terms, the government should have amended the existing Transitional Justice Acts and enacted the necessary laws around it. This would have bolstered the confidence of conflict victims. They do not trust these commissions because they have been formed without consulting the victims. These commissions ignored the Supreme Court (SC) verdict that directed the process be made victim-centric.

The TRC has received 58,052 complaints related to human rights violations committed by the State and the Maoist rebels during the conflict period. The CIEDP has received 2,888 complaints. However, the Commission has not been able to speed up its work due to delay by the government in enacting and promulgating the required legislations. This has deferred justice for conflict survivors, whereas the Commissions have not been able to carry out their work effectively.

Conflict victims have lost hope. This is due to the lack of legislation addressing legal problems such as granting general amnesty in cases related to serious violations of human rights. TRC has not been able to carry out its work, other than collating complaints, due to lack of human resources and needed legislation. Commissions need to open offices in all seven provinces to be able to carry out investigations at the local level.

In January of 2015, the Supreme Court struck down a dozen provisions of the Truth and Reconciliation Commission and Enforced Disappearances Enquiry Act, which were inconsistent with international laws and transitional justice practices. The Apex Court verdict ruled out amnesty for serious crimes, including murder, torture, disappearance, and sexual assault. Nevertheless, the government has not streamlined these provisions in line with the verdict. Doubts have been created about its intention to prosecute perpetrators.

The CIEDP has more challenges ahead, as disappearances have not been criminalized in Nepal. A draft of the bill, the Act of Disappearance seeking to criminalize disappearances, was forwarded last year by the Commission, but has been held up by the government.

For further consideration, we see that the government has also yet to criminalize torture. An Anti-Torture Bill was registered with the Parliamentary Secretariat two years ago. However, the process of endorsing the bill remains in the distant future.

If the Nepalese government continues to ignore calls for legal reforms and information, these commissions can neither recommend action against the culprits nor initiate reconciliation efforts. It will be useless to start any investigation into the registered cases due to this lacuna. As a result, the government needs to furnish the commission with staff and an adequate budget. Experts should be hired to launch investigations into complaints. If not, it will buttress the fact that the Commissions were set up to whitewash crimes committed during the war.

Human Rights defenders and organizations have been demanding amendments to the Act, with the government ignoring its calls for legal reforms. The national and international human rights communities sidelined themselves from engaging

in the process. This is the situation now, as there are legal lacunae in the Transitional Justice Act that are not up to international standards.

Our political leadership must come to realize the gravity of the ongoing process. Nepal has national and international obligations to address war crimes in a timely manner. Firstly, Commissions must get a firm commitment from the political leadership. Secondly, support for the process, paving the way in assuring victims that things will move forward smoothly. There must be a time-honored guarantee of legal reforms and information, before initiating investigation into registered complaints by conflict victims.

It has been too long a wait for justice. The government should be responsible for the consequences if the ongoing transitional justice process (which is half-way finished), fails without satisfactory results. Conflict victims are increasingly anxious about whether justice for them will ever be served.

The ALRC respectfully requests the HRC to urge the government of Nepal to amend the existing Transitional Justice Acts. Enact the required laws; provide necessary funds and human resources so that these Commissions can work utilizing international standards. These measures will help facilitate the investigation process, and earn the trust of conflict victims. Victims want closure of their cases, and an end to the FIASCO.
