

VERDICT

Women's Tribunal on Sexual Violence on Women During Conflict

Kathmandu, Nepal, 8 December 2014

I. Preliminary remarks

On 8 December 2014, the Women's Tribunal on Sexual Violence on Women during Conflict was convened. We have heard a presentation from Mandira Sharma, Advocate regarding Armed Conflict and Sexual Violence in Nepal.

Most crucially, we have heard the testimony of women witnesses who survived an environment that included both the fear of, and specific acts of sexual violence; and constant sexual intimidation, during Nepal's armed conflict. We would like to particularly acknowledge and commend each one of these witnesses for their bravery in coming forward to break the silence around sexual violence during the years of armed conflict. These women have demonstrated tremendous courage in bringing their stories forward today for the sake of achieving justice and demanding State accountability, and to prevent such acts of sexual violence from happening to other women.

In view of all of the evidence heard, we make the following findings.

II. Findings

A. On crimes committed (legal characterization of violent acts)

The evidence presented by the survivors of sexual violence clearly indicates that during the conflict, various acts of sexual violence, including rape, sexual intimidation and sexual torture; were committed that are violations of Nepalese law; international law governing armed conflicts; human rights treaties to which Nepal has been a party since before the conflict, including CEDAW, the Convention on the Rights of the Child, the ICCPR, and the Convention against Torture; and that may constitute crimes against humanity

B. On patterns and nature of sexual violence

The evidence presented revealed the following:

- Notwithstanding acts of sexual violence that might have been committed by non-State actors, the testimonies presented strongly demonstrated the crimes of sexual and other violence by State actors—such as the then Royal Nepalese Army and police.
- The testimonies described specific incidents of rape, torture, and sexual intimidation.
- The majority of the women did not make any formal complaints because of the fear of social stigma, discrimination and marginalization. Many of them did not know where to

go to make such complaints; and because of the non-availability and the failure of mechanisms that should have facilitated an enabling environment for submission and receipt of such complaints.

- The three instances in which the women did try to lodge a complaint, they found that they were not heard; and their complaints not recorded by the relevant authorities.
- We also found that following these instances of sexual violence, the husbands and families of the survivors accused them of either inviting or consenting to the violence. This led to severe domestic violence, including prolonged periods of physical violence, denial of basic necessities, and abandonment by husbands, family members and communities.
- In many instances the women and their children were forced to leave the marital home following the sexual violence.

C. On factors contributing to sexual violence during the conflict

The evidence presented revealed that the following factors contributed to the sexual violence perpetrated during the armed conflict:

- historic and entrenched unequal power relations between men and women in Nepal, reflecting a patriarchal and feudal culture of domination over and discrimination against women
- intersectional discrimination experienced by women on the basis of class, caste and ethnicity
- a purposeful strategy on the part of the State to target areas that were perceived to be Maoist strongholds
- suspension of human/civil rights imposed by the government during the conflict
- an environment of fear fostered by both sides during the conflict
- in some areas it appears that sexual violence was used as a premeditated strategy of aggression by the State
- in at least one instance, failure of commanders to prevent or punish sexual violence was apparent
- lack of mechanisms for victims to report sexual violence or otherwise access justice

- social stigma resulting in backlash, including abandonment by husbands, families and communities deterred and continues to deter women from reporting sexual violence

These factors, taken individually and/or cumulatively, perpetuate a culture of impunity and effectively encourage a culture of silence on sexual violence. This in turn creates an acceptance of injustice in relation to sexual crimes, and a complete derogation of women's rights as citizens of Nepal.

III. Legal framework

A. On crimes

The panel considered the evidence in light of the following legal regimes:

1. War crimes

Rape and sexual violence committed during armed conflict are prohibited as they amount to:

- violence to life and dignity of persons, including mutilation, cruel treatment and torture;
- outrages upon personal dignity, in particular humiliating and degrading treatment

2. Crimes against humanity

In the context of a widespread or systematic attack on the civilian population, the following are prohibited:

- Rape
- Torture
- Enslavement (sexual slavery)
- Persecution
- Other inhumane acts – such as enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

3. Violation of Human Rights treaties

- CEDAW (ratified in 1991): prohibits discrimination against women in the substantive enjoyment of human rights, including gender-based violence
- Convention of the Rights of the Child (ratified in 1990): prohibits
 - sexual exploitation or abuse of children under 18
 - torture
 - cruel, inhuman or degrading treatment
- ICCPR (ratified in 1991): prohibits
 - slavery of any kind, including being held in servitude
 - torture
 - cruel, inhuman or degrading treatment

- Convention against Torture (ratified in 1991): prohibits torture and other cruel inhuman and degrading treatment

4. Nepalese law

- Prohibits rape, including incest or gang rape
- Prohibits the intention to rape: looking at, touching or grabbing any organs with the intention to commit rape
- Requires rape to be reported within 35 days

B. On accountability

The State is in breach of its duty to ensure accountability for violations. This duty is articulated in several international instruments, including CEDAW and Security Council Resolutions:

a) CEDAW, particularly General Recommendation No.30

Imposes an obligation on countries to report on the implementation of their obligations of non-discrimination and substantive equality for women in the context of conflict. Includes comprehensive recommendations for meeting this obligation.

b) Security Council Resolutions, particularly 1820, 1888 and 1960

Builds international commitment to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls.

c) UN Principles and Guidelines on the Right to a Remedy and Reparation for Victims

Requires that reparations be provided for victims of serious violations of human rights, including sexual violence. Reparations could include: restitution, compensation, rehabilitation and guarantees of non-repetition.

IV. Recommendations

In light of the above we strongly make the following recommendations:

1. The National Human Rights Commission of Nepal (NHRC) must investigate the particular cases heard today, and begin a process of investigation and documentation of further cases, and take all appropriate further steps to achieve justice. To this end, they should create a mechanism and process whereby they proactively seek information regarding sexual violence during conflict, including hearing further testimonies from witnesses.
2. The NHRC must urgently look at the issue of compensation and broader reparations for the witnesses whose cases were heard today, and all cases of sexual violence committed during the conflict. In light of the practice of forcibly evicting women from their homes following conflict-related rape and sexual violence, the NHRC should consider land and property rights within the scope of reparations.
3. In line with its mandate, the Peace and Reconstruction Ministry should establish a standing committee to investigate and document incidents of sexual violence.
4. Appropriate services, including psycho-social support, medical services, legal support, livelihood support, and educational opportunities must be made available to survivors and their families.
5. Survivors of sexual violence must be eligible for interim relief measures.
6. The national action plan executing UN SCR 1325 and 1820 must urgently redress sexual violence against women.
7. In light of the context of armed conflict, and the ability of women to provide testimonies at this time, the statute of limitations for reporting cases of sexual violence must not be an obstacle or a barrier to receiving, hearing or undertaking trials of complaints of sexual crimes from the survivors.
8. The definition of rape in Nepali law must be broadened, to include acts of sexual violence not limited to “peno-vaginal penetration” only. Comprehensive legal reform should bring Nepali law in line with international standards.

9. Measures must be taken to ensure that the Nepal law on citizenship must be implemented in line with its commitment under Article 9 of the UN CEDAW, which demands that women be able to acquire, change and transfer their citizenship on a basis of equality and non-discrimination with men. Especial steps must be taken to ensure that the citizen rights of women survivors of sexual violence are ensured in full at the very grass-root level. It should be ensured the knowledge or the lack thereof; of the paternity of children should not be an obstacle to their claiming citizenship from the maternal side.

10. The proposed Truth and Reconciliation Commission (TRC) should not be a substitute for legal accountability for serious crimes committed during the conflict including crimes of sexual violence. It must not preclude criminal investigations and prosecutions of such acts.

11. The TRC should not be constituted without amending the law in line with international standards.

12. Any mechanisms and processes set up in the future to administer justice and reparations for war crimes in Nepal, including the NHRC in receiving complaints or charges should follow the international standard set by article 2 of the Optional Protocol to CEDAW and the ICESCR, which allows the filing of communication either by or on behalf of individuals, or groups of individuals; with their consent, unless the “author” (other persons or human rights organizations), can justify acting on their behalf without their consent.