



Special Rapporteur on Follow-up to Views
UN Human Rights Committee
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

By email: petitions@ohchr.org

19 June 2019

Dear Special Rapporteur,

Human Rights Committee Communication No. 2245/2013: Purna Maya v Nepal

We write to provide an update to the Committee on the lack of progress in implementation of the Committee's Views in the above matter. The Committee requested that the State Party respond to its Views within 180 days; to our knowledge, the State Party has not responded to the Committee. Accordingly, we respectfully suggest that the appropriate grading for implementation of the recommendation is "D."

We note with concern that since the publication of the Views by the Committee in June 2017, the Author and her legal representatives have received no correspondence or contact from the State Party in relation to the steps it plans to take in relation to her case or to ascertain the views of the Author on appropriate forms of reparation.

In addition, there is no designated point of contact within the Government for the Author and his legal representatives to approach concerning implementation. As a first step, the Author's legal representatives ask that the Government notify them by email (cases@redress.org) or post (REDRESS, 87 Vauxhall Walk, London, SE11 5HJ, United Kingdom) of the coordinating body and appropriate contact point.

For ease of reference, we take each of the remedies ordered in turn.

1. Effective and complete investigation of the facts

The Committee has found that the State Party is obligated to conduct a thorough and effective investigation into the facts submitted by the Author. The State Party noted in their submission to the Committee prior to the Views that the case may be investigated through the mechanism established under the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014 ("TRC Act"). However, as this Committee has clearly held in this case and other cases concerning Nepal, the Truth and Reconciliation Commission does not constitute an effective remedy for the Author.

Though the TRC Act's provisions granting the Commission the power to recommend amnesties for gross violations of international human rights law or serious violations of international humanitarian law were struck down by the State Party's Supreme Court in 2015,¹ the State Party has not amended the TRC Act in light of the Supreme Court's decision and the Commissions remained flawed by design.

¹ Suman Adhikari and Ors. v. Government of Nepal, Writ No 070-WS-0050 of the Year 2071 B.S, Writ No 0057 of the Year 2069 B.S. On 4 July 2015, the government filed an application before the Supreme Court requesting the review of the writ order. The next hearing is scheduled on 20 June 2019.

A renamed and proposed Transitional Justice Related draft bill of June 2018 included some positive amendments but retained critical features that promote impunity, including a proposed sentencing scheme that did not adequately reflect the gravity and nature of crimes committed during the conflict in question.² With the change of the Minister of Law, the draft bill was disowned.

Rather than adopt the proposed amendments, the State Party permitted the Commission's mandate to lapse in 2019 before reconstituting the TRC without fixing the legal framework or conducting adequate consultations with the victims. The TRC has now reportedly completed preliminary investigations into less than 10 percent of complaints registered, and its mandate has been extended only until 2020.³ To date not a single perpetrator has been interviewed. Further, the tenure of the commissioners of the TRC and the CIEDP ended on 13 April 2019, as the government's amendments to the Act in February 2019 extended the mandate of the commissions but not that of the commissioners.

As currently constituted, the TRC Act remains out of conformity with the Supreme Court's writ of mandamus, and is in violation of the Covenant and other international standards of international human rights law. It remains an inadequate remedy in respect of the violations identified by this Committee.

In the absence of an effective investigation through the TRC, the State Party remains obligated to initiate a criminal investigation into the present case. Further delaying criminal investigation proceedings by diversion to the transitional justice mechanisms discussed above remains contrary to the Committee's recommendation.⁴

Appropriate grading: The Author respectfully suggests that at the current time the appropriate grading for implementation of this recommendation is "D."⁵

Suggested course of action: We call on the State Party to create a specialized team of appropriately qualified police investigators and prosecutors, tasked to immediately carry out an effective, independent, impartial and complete criminal investigation into this case, that complies with the applicable international standards on the prosecution of sexual and gender-based violence, and to keep the Author fully informed of steps taken and progress achieved. In this regard, we request the State to submit a detailed and written plan of investigation into this case to the Special Rapporteur on Follow-up as soon as possible.

2. Prosecution and punishment of those responsible

In light of the lack of information regarding any ongoing investigation into the Author's case (and the serious flaws in the TRC Act raised above) there is no indication that any criminal prosecution of those responsible for crimes committed is either imminent or likely.

The TRC Act in its unamended form continues to grant the Commission the power to provide amnesty for crimes committed in this and other cases, and allows for the delay or obstruction of criminal prosecution even where recommended by the Commission. Though the TRC Act states that the Commission "shall not recommend for amnesty to the perpetrators involved in rape and other serious crimes of serious nature in which the Commission follows the investigation and does not find

² *Nepal: Draft Bill on Transitional Justice Falls Short of International Law and Standards* (July 20, 2018), Amnesty International, International Commission of Jurists and TRIAL International, <https://trialinternational.org/latest-post/nepal-draft-bill-on-transitional-justice-falls-short-of-international-law-and-standards/>.

³ *Law minister-led mechanism to decide future of transitional justice*, The Kathmandu Post (Jan. 27, 2019), <http://kathmandupost.ekantipur.com/news/2019-01-27/law-minister-led-mechanism-to-decide-future-oftransitional-justice.html>.

⁴ Human Rights Committee, Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2245/2013, UN Doc. CCPR/C/119/D/2245/2013, 23 June 2017. See also Joint Communication from Special Procedures (OHCHR), UN Doc. OL NPL 1/2019 (12 April 2019).

⁵ <http://realrightsnow.org/en/purna-maya/>

sufficient reasons and grounds for amnesty,”⁶ the criteria for recommending amnesty are broad and grant the Commission significant discretion to recommend amnesty for particular perpetrators.

Appropriate grading: Again, the Author respectfully suggests that, at the current time, the appropriate grading for implementation of this recommendation is “D.”

Suggested course of action: As above, we call on the State Party to create a specialized team of appropriately qualified police investigators and prosecutors, tasked to immediately carry out an effective and complete criminal investigation in this case with a view to prosecution of those responsible.

We also respectfully suggest that the State Party amend Section 26 of the TRC Act to prevent amnesties for gross human rights violations, international crimes, and crimes against humanity (including rape, torture and other forms of sexual violence of comparable gravity). Further, any decisions to grant amnesty should be made subject to judicial review.

3. Compensation and appropriate measures of satisfaction

Contrary to the Committee’s recommendation, the Author has not received any compensation, restitution, reparation or other benefits. Additionally, the Author has not received appropriate measures of satisfaction, including a formal apology or assurance of non-repetition.

Any references to possible future action, including “interim relief” measures to be provided by the Commission established under the TRC Act—which has yet to publicly file the results of any investigations it may have conducted—does not constitute concrete implementation of the Committee’s recommendations.

Torture is one of the most serious human rights violations, and the damage (both pecuniary and non-pecuniary) to the Author has been extreme; the Author is entitled to appropriate compensation and rehabilitation services, among other forms of reparation. The State Party is obligated to award the Author with an amount of compensation that covers all pecuniary and non-pecuniary damages suffered.

Appropriate grading: Given that the State has not taken any actions to implement this recommendation, it is respectfully suggested that the appropriate grading for this recommendation at the current time is “D.”

Suggested course of action: We respectfully encourage the Government of Nepal to contact Purna Maya through her legal representatives and to obtain an estimate from her regarding pecuniary and non-pecuniary damages incurred. Damages should include consideration of all costs incurred as a result of the Author’s torture, including medical expenses to treat injuries sustained and ongoing physical check-ups and psychotherapy for the injuries suffered, and loss of income and other economic opportunities. Non-pecuniary damages must include compensation for the Author’s pain and suffering.

We also encourage the State Party to contact the Author through her legal representatives to discuss additional measures of satisfaction that may be appropriate in this case, including a formal apology.

4. Rehabilitation and medical treatment

As stated by this Committee, the State Party is obligated to ascertain the medical, psychological and social rehabilitation needs of the Author and her family, and to provide appropriate services to support her full rehabilitation to the greatest possible extent. However, the State Party has not initiated any contact with the Author to identify rehabilitation needs, including psychological rehabilitation or medical treatment, and to provide these services. It has been almost two years since the Views were

⁶ Section 26 of the TRC Act.

adopted and Purna Maya continues to urgently need psychosocial support to cope with the effects of the violations committed against her.

Appropriate grading: It is respectfully suggested that the appropriate grading for this recommendation is “D” as no concrete steps have been taken to provide any rehabilitation or medical services.

Suggested course of action: We respectfully encourage the State Party to contact the Author through her legal representatives to carry out a thorough assessment by suitably qualified professionals of future medical, psychological and social rehabilitation needs for the author. Subsequent to such an assessment, we encourage the State Party to establish a rehabilitation plan, with appropriate and accessible services, and guaranteed funding for such services.

5. Avoidance of similar violations in the future

As stated by the Committee, the State Party is obligated to take the following measures, which we will discuss in turn.

a. Abolish the 35-day statute of limitations for filing complaints of rape

The State Party has neither abolished nor significantly increased the statute of limitations. Despite the adoption of a new criminal code in 2017 that increases the maximum jail term for rape from 15 to 20 years, the statutory limitation for rape continues to fall short of international law standards. As the Committee on the Elimination of Discrimination against Women (CEDAW) has noted, the one-year statute of limitations for the crime of rape does not accurately reflect the gravity of the crime, and disproportionately negatively impacts women⁷. Additionally, the new criminal code does not have retroactive effect, so it does not apply to conflict-related cases.

b. Remove obstacles that hinder the filing of complaints and effective access to justice for victims of rape

As noted by the CEDAW Committee in its 2018 Report, women continue to face many obstacles seeking to file cases of rape and sexual violence, including a lack of legal aid in commonly spoken languages and targeted financial support for lower-income, indigenous or other women belonging to minority groups, and mistrust of the judicial system.⁸ Social stigmatization remains a barrier that prevents women from reporting sexual violence.

Further, the State Party is obligated to ensure that all judicial and law enforcement officers permit the registration of cases of sexual and gender-based violence, and execute any judgments regarding such cases as established by the State Party’s local and higher courts.

c. Criminalize torture and remove legal provisions allowing for impunity for this crime

The State Party’s revised Criminal Code criminalizes torture and provides for a maximum of five years’ imprisonment or fines of up to Rs 50,000. The Code is unclear on compensation to the victim. It only provides that the victim shall be provided appropriate compensation from the perpetrator(s).⁹

The definition of torture provided for in the 2017 Criminal Code is narrowly construed and does not comply with international human rights standards, including those outlined by the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Though the Criminal Code criminalizes acts of rape and other sexual violence, it does not classify such acts as

⁷ Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations on Nepal, UN Doc. CEDAW C/NPL/CO/6, 14 November 2018, para. 10.

⁸ *Ibid.*, para. 11.

⁹ Asian Human Rights Commission, Nepal: Addressing torture essential to cementing political change, June 26, 2018, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-033-2018/>.

a form of torture, and its definition of “sexual intercourse” does not comply with the ICC definition of rape as any kind of penetration with a foreign object. Further, the Criminal Code criminalizes only the rape of women or girls, and retains a limitations period for filing complaints of rape as well as discriminatory provisions on penalties for marital versus non-marital rape and inadequate reparations for rape victims.¹⁰

The State Party has yet to enact a separate anti-torture law that supplements the Criminal Code’s definition of torture in line with the State Party’s international legal obligations.

d. Facilitate a national dialogue on sexual violence against women

Though, as noted above, the State Party has taken positive steps in criminalizing torture and strengthening the prohibition against rape, a lack of full and effective investigations of such cases perpetuate a climate of impunity for perpetrators, and to our knowledge the Government has not acted to run a public information campaign aimed at preventing sexual violence.

e. Provide training and conduct awareness-raising campaigns on violence against women and provide adequate protection to victims

The State Party has not established policies to ensure the mandatory registration of cases of sexual violence and confidential storage of medical records of victims of sexual violence, nor has it engaged in widespread training of judicial and law enforcement officers with regards to sexual violence. Further, the State Party has not met its obligation to enact laws protecting victims of rape and/or witnesses, including creating avenues for the secure and confidential reporting of rape cases or providing services and interim relief or reparations to victims of sexual violence.¹¹

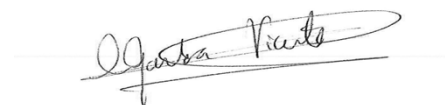
Appropriate grading: The Author respectfully submits that the appropriate grading at this point in time for this recommendation is “D.”

Suggested course of action: As measures to prevent the recurrence of these violations, we suggest that the State Party should (i) Amend its Criminal Code to remove the statute of limitations on reporting rape; (ii) Initiate targeted outreach activities and information campaigns to ensure women and girls are aware of the available mechanisms for gaining access to justice; (iii) Provide adequate legal aid and assistance services to facilitate access to justice for all women; (iv) Amend the definition of torture under the Criminal Code to comply with international standards, include rape and other forms of sexual violence, and revise the penalty for rape to reflect the gravity of the crime and harms suffered by victims; (v) Enact a new anti-torture law in line with international standards that incorporates rape a form of torture, (vi) Conduct a public awareness campaign on the prevention of sexual violence against women; and (vii) Train police, judicial officers and medical professionals on the appropriate handling of rape cases. In this regard, we request the State to submit a detailed report on the actions it plans to take to fully implement the Recommendations included in the present case. Such report should be submitted to the Special Rapporteur on Follow-up as soon as possible.

Yours sincerely,



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Alejandra Vicente
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¹⁰ International Commission of Jurists, Serious Crimes in Nepal’s Criminal Code Bill, 2014: A Briefing Paper, March 2017, pages 18 – 29, <https://www.icj.org/wp-content/uploads/2017/03/Nepal-Serious-Crimes-Bill-Advocacy-Analysis-Brief-2017-ENG.pdf>.

¹¹ Human Rights Watch, Nepal’s Rape Survivors Need Answers, 4 September 2018, <https://www.hrw.org/news/2018/09/04/nepals-rape-survivors-need-answers>.