

2012

A Snapshot of Extrajudicial Executions

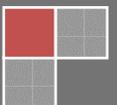
Manipur Women Gun Survivors Network

A report to highlight the need for improved access to justice for women survivors of armed conflict in Manipur.

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Purpose

The enclosed testimonies have been prepared as per the claims format required by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. These are not exhaustive legal accounts, but present a small number of the innumerable cases which have fallen on deaf ears.

Mr. Heyns' final conclusions and recommendations will be submitted as a comprehensive report to the Human Rights Council at a future session in 2013. This report aims to complement the data the Special Rapporteur gathered on his recent trip to India.

The testimonies are a mere snapshot of the injustices suffered by Manipuri women and men. These are examples of extrajudicial executions committed by police and military personnel. It is beyond the scope of this report to document the numerous accounts of discrimination, rape, harassment and non lethal injuries inflicted upon the women and men of Manipur. But these crimes continue to occur on a daily basis. This report also does not account for the thousands of innocent civilians murdered by insurgent forces.

It should be stressed that the following are a particular class of cases, those where the victim was not a member of any insurgent group and was arbitrarily murdered by the police or military forces. In the majority of cases, the police produce an alternative, fabricated account of events in a report, invariably claiming the victims to be members of an insurgent group. As such, those left behind are unable to access their basic legal rights and are not entitled to government benefits. The Indian government does not extend financial support to widows and children of men branded by the state as rebels or terrorists.

These cases were chosen because they highlight the accountability deficit in the region. This is not an attack on the Government of India. In fact, the National Human Rights Commission and

the Central Bureau of Investigation have condemned similar cases. But the means to access justice in Manipur are stunted by many factors - mainly the Armed Forces (Special Powers) Act, corruption and discrimination. Such atrocities will only cease if there is rigorous and courageous legal reform.

Context

Manipur is one of eight states in the Northeast region of India. This region is reeling from six decades of conflict under the shadow of the Armed Forces (Special Powers) Act (AFSPA). The draconian law has been widely criticised for the fact that it simultaneously escalates anti-government sentiment as well as anti-insurgency militarisation.

AFSPA grants extraordinary powers to armed forces including the right to ‘fire upon or otherwise use force, even leading to death, of any person who is acting in contravention of any law’. This has been interpreted in a way that has allowed for fatal shooting of civilians on mere suspicion.

This report is prepared by a non-governmental organisation doing grassroots work to empower local women in Manipur. The creation of The Manipur Women Gun Survivors Network stemmed from Christmas Eve 2004, when Binalakshmi Nepram witnesses the aftermath of the killing of 27-year-old Buddhi Moirangthem in Wabgai Lamkhai village of Thoubal district, southeast of Manipur's state capital, Imphal.

There, a group of three gunmen had dragged Buddhi from his car-battery workshop. Within a matter of minutes they shot him dead. To date, his young wife Rebika Akham does not know who the killers were and why they killed her husband.

A few days after the incident, Ms Nepram contributed Rupees 4500 (USD 110) to buy a sewing machine for Rebika. This machine enabled her to stitch and tailor clothes for the villagers and to secure her a humble living after the death of her husband. This intervention was the first ever of the Manipur Women Gun Survivors Network.

The Network attempts to lift women above the trauma and agony faced in armed conflict by helping them to find ways to heal the scars that decades of violence have caused to the community. The Network's direct intervention promotes a gender sensitive approach to the gun crisis, supports women economically and brings them forward to play a crucial role in small arms policy. It is the first initiative of its kind in India.

The network stresses that women are not passive victims or mere recipients of aid. These women are agents of change who actively engage in arms control and peace building efforts. The network is an exemplification of bottom-up community devised development efforts.

Access to Justice

Many women in Manipur have expressed exasperation at the lack of legal support available to them. Access to justice is inadequate in Manipur, and it can be argued it is particularly difficult for women. If women are able to afford a lawyer in the first place, complaints often go unheard, or are dismissed without adequate investigation. This can leave claimants without requit or recompense, or in some cases completely bankrupted.

Widows are entitled to an ex gratia lump sum payment of 100,000r, and this amount has recently doubled. But, as mentioned above, in cases of extrajudicial execution committed by state forces, police reports are often fabricated. Those seeking to make claims for compensation have no standing if the police report declares that the victim was a member of insurgent forces. This gaping loophole and is often exploited, as evidenced by scores of testimonies taken by MWGSN.

Many women are under the impression that it will be very costly to secure the few rights to which they are entitled. There is a lack of knowledge about legal rights and available services. The Human Rights Law Network and other civil society organisations have held clinics to educate citizens in this area, but much work remains to be done. Despite the Legal Services Authority Act specifying that legal aid is available to all women (and the poorest strata of men)

the widely held belief is that only the rich can access the justice system.

These beliefs are not without foundation. Women often encountered corrupt police officers, asking for bribes in exchange for providing information, filing claims or producing documents. Police have mocked widows who have approached them asking questions about what legal recourse they can pursue. Women are often ignored by police and the various Ministries to which they lodge complaints, and in some cases they are also harassed and abused for seeking help.

Another important aspect is the fear for their safety felt by Manipuri people in reporting violations to the police. There have been cases where families have been specifically targeted by insurgent groups for reporting atrocities. There are also cases where widows and journalists have been threatened by the Indian Army for pursuing a case. Further, if citizens are afraid of police as opposed to empowered by them, then they are less likely to approach them and submit reports about personal tragedies. This is particularly true for women who have been the victim of sexual violence.

Women can also be restricted by their family situation. Widows often have no autonomous funds or influence over family decisions. Whether by insurgency, police, the army or direct family, access to justice for women is impeded from all sides of the conflict in Manipur.

The process

Generally, the initial step taken by survivors is to make an inquiry with local police. When ignored, widows sometimes receive support from family and friends and form what is called a Joint Action Committee (JAC). The tools utilised by JACs are to stage protests, call strikes and petition the Chief Minister to either call for an inquiry, grant compensation or grant a family member a government job. These ad hoc compensation methods are administered without any formal explanation as to the amount awarded or the reasoning adopted. These band-aid solutions are widely regarded as a gag order on the families, to prevent prosecution of the guilty party.

When JACs are unsuccessful, survivors sometimes approach local NGOs, who can submit a petition on their behalf to the Criminal Court or the Officer in Charge of the relevant police station. Under their original jurisdiction, the Supreme Court and the Guahati High Court can hear these matters. Applications can also be made to the National Human Rights Commission, and more recently, to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

Although India is party to the International Covenant on Civil and Political Rights, it is not party to the First Optional Protocol which allows for the Human Rights Committee complaints mechanism. The National Human Rights Commission has set a good precedent for ordering an inquiry in favour of survivors. But success stories are still the very slim minority.

There is little evidence of a pro-bono culture within the Manipuri legal profession. Claims are often lodged in a class action style by local human rights NGOs, who are under-resourced both financially and in terms of legal expertise. There are some lawyers who pursue extrajudicial execution claims against the state, but the backlog and the caseload are overwhelming. These lawyers also express frustration at the instances where the family of the victim do not cooperate, or where family members take bribes from the authorities in exchange for dropping the case, when their legal team have already invested much time and energy.

If the case does go to trial, witnesses are a huge problem. Witnesses are invariably too afraid to testify against the police and armed forces for fear of persecution. Often there are no witnesses to fake encounters, as it is a common tactic for armed personnel to fire rounds of blanks where they intend to dump the body, so that potential witnesses take shelter.

Lack of legal support for survivors is one expression of the environment of impunity that disempowers survivors. There is an understandable lack of trust in legal structures. Women who are psychologically barred from speaking about the relevant events, or who live in remote areas, or who are physically or mentally disabled, do not have access to the requisite support systems for seeking compensation, let alone prosecution.

Recommendations from UN Women

The following recommendations are directly lifted from UN Women initiative - Progress of the World's Women. The 'justice chain' is a series of steps that must be taken to improve access to justice. Following the justice chain are some proven approaches to making justice work for women. These are applicable in the Manipur context and could be implemented by Indian policy makers to address the protracted accountability deficit in Manipur.

The Justice Chain

Action is needed in 3 key areas:

1. Clear mandates and procedures

Clear mandates are essential to ensure that public services are responsive to women. National legal frameworks should provide for the development of standardized protocols, regulations to enforce the law and mechanisms to ensure coordination between different parts of the system. Adequate and sustained funding, as well as measures to monitor implementation are also needed.

2. Integrated and specialized services

Because of the institutional and social barriers that women face, they need specialized services tailored to meet their needs. One promising approach is to integrate services, for example through one-stop shops. By bringing together police, forensic and health care services under one roof, they reduce the number of steps that a woman has to take to access justice.

3. Putting women on the front line of the justice system

The presence of women in the police and judiciary is a matter of equality and fairness, but it is also important for maintaining public confidence in the justice system. Global data show that there is a positive correlation between women's representation in the police and women's

willingness to report sexual assault.

When judges are made aware of the barriers that women face in accessing justice, attitudes can change and they often come up with simple but effective solutions, such as waiving court fees, providing forms free of charge or prioritizing sensitive cases, including those related to violence against women.

Proven approaches to make justice systems work for women

Below are some proven approaches to making justice systems work for women. They are achievable and, if implemented, they hold enormous potential to advance women's rights.

1. Support women's legal organizations

Women's legal organizations are at the forefront of making justice systems work for women. Where government funded legal aid is limited, women's organizations step in to provide the advice and support that women need to pursue a legal case, to put a stop to violence, to seek a divorce or claim the land that is rightfully theirs.

They have been leaders in successful interventions in plural legal environments, showing that it is possible to engage with plural legal systems while simultaneously supporting local cultures, traditions and practices.

Women's organizations have also spearheaded law reform efforts and strategic litigation cases that have transformed the landscape for women's rights nationally, regionally and internationally. These cases, including those on violence against women, sexual and reproductive health, citizenship and inheritance have enforced or clarified laws already on the books, challenged laws that should be repealed and created new laws to fill legislative gaps.

Supporting these organizations is an urgent priority and a vital investment to increase women's access to justice.

2. Support one-stop shops and specialized services to reduce attrition in the justice chain

The justice chain, the series of steps that a woman must take to access justice, is characterized by high levels of attrition, whereby cases are dropped as they progress through the system. As a result, only a fraction of cases end in a conviction or a just outcome.

One way to reduce attrition, especially in cases of violence against women is to invest in one-stop shops, which bring together vital services under one roof to collect forensic evidence, provide legal advice, health care and other support. The Thuthuzela Care Centres (TCC) in South Africa are one successful example of this approach, now being replicated in other countries including Chile and Ethiopia.

3. Implement gender-sensitive law reform

Gender-sensitive law reform is the foundation for women's access to justice. CEDAW provides the internationally agreed gold standard for legal reform to achieve gender equality. Action is needed to repeal laws that explicitly discriminate against women; to extend the rule of law to protect women in the private domain, including from domestic violence; and to address the actual impact of laws on women's lives.

While CEDAW is among the most widely ratified of United Nations treaties, it also has one of the largest number of reservations. The most common are on article 16, which guarantees women's rights within marriage and the family. Removing these reservations is a critical step to putting in place a legal framework that supports women's rights.

To have the most impact, laws must be drafted to drive implementation, including clear mandates, procedures, funding and accountability mechanisms. For example, in 45 countries, laws on domestic violence include guarantees of free legal aid for women. In Nepal, financial incentives have ensured implementation of laws on equal inheritance, which has led to a threefold increase in women's property ownership.

4. Put women on the front line of law enforcement

Employing women on the front line of justice service delivery can help to increase women's access to justice. Data show that there is a correlation between the presence of women police

officers and reporting of sexual assault.

In post-conflict Liberia, the all-women Indian police brigade has increased reporting of sexual violence and has also boosted recruitment of women into the force. Despite these benefits, women's average representation in the police does not exceed 13 percent in any region of the world.

The gains from employing women in the police are not automatic: investment is essential. The experience from Latin America and elsewhere is that women's police stations and gender desks must be adequately resourced, and staff expertly trained, properly rewarded and recognized for their work. Furthermore, recruitment of women police officers and resourcing of gender desks must be part of a broader strategy to train and incentivize all police to adequately respond to women's needs.

5. Train judges and monitor decisions

Balanced, well-informed and unbiased judicial decision-making is an essential part of ensuring that women who go to court get justice. However, even where laws are in place to guarantee women's rights, they are not always properly or fairly applied by judges.

Organizations like the International Association of Women Judges and the Indian NGO Sakshi provide judges, both women and men, with specialized training and space to discuss the challenges they face, which can help to build understanding of and commitment to gender equality. Judges who have been trained also come up with simple but effective ways to make courts more accessible, such as waiving court fees, providing forms free of charge or prioritizing sensitive cases.

Systematic tracking of judicial decision-making is needed at the national level to provide accountability to women seeking justice and to enable civil society and governments to monitor the performance of the courts on women's rights.

6. Increase women's access to courts and truth commissions in conflict and post-conflict contexts.

Very significant advances in international law in the past two decades have, for the first time,

made it possible to redress sexual violence crimes. However, prosecutions are rare. To increase the number of convictions, it is vital that international courts prioritize gender-based crimes in their prosecution strategies.

Courts and other justice forums such as truth commissions must be made more accessible to women. The only way to guarantee this is to ensure that women play a central part in defining the scope, remit and design of all post-conflict justice mechanisms.

Measures that make a difference include financial assistance, childcare and transport to help women overcome the practical obstacles to their participation; psychosocial counselling, health care and other long-term support; and provision of closed session hearings to enable women to testify about sexual violence.

In the Democratic Republic of the Congo, mobile courts are bringing justice to women, responding rapidly to investigate and prosecute cases of sexual violence. Although currently small-scale, these pioneering courts are helping to end impunity for these crimes.

7. Implement gender-responsive reparations programmes

Reparations are the most victim-focused justice mechanism and can be a critical vehicle for women's recovery post-conflict. However, while the international community has dedicated substantial funding to international courts and other transitional justice mechanisms, this has not been matched by an equal commitment to assist states to fulfil their obligations for reparative justice.

To benefit women, reparations programmes must take account of all forms of sexual and gender-based violence, and include individual, community and symbolic measures, as well as access to services and land restitution. Packages of benefits can be designed to promote victim empowerment and self-sustainability to address underlying gender inequality.

8. Invest in women's access to justice

Strengthening the rule of law has been a major priority for governments for several decades, but

only a fraction of this funding is being spent on justice for women and girls.

Analysis of the major bilateral donors' funding for justice shows that of the \$4.2 billion that was allocated to justice in 2009, \$206 million (5 percent) was spent on projects in which gender equality was a primary aim. Over the decade 2000 to 2010, the World Bank has allocated \$126 billion to public administration, law and justice, of which only \$7.3 million was allocated to the gender equality components of rule of law and access to justice projects.

To ensure governments are meeting their international commitments to put in place a legal framework that guarantees women's rights and a functioning justice system, a significant scaling up of investments is needed.

Recommendations from Human Rights Watch

To the Government of India

Repeal the Armed Forces (Special Powers) Act, 1958 as recommended by the government-appointed Jeevan Reddy committee.

Repeal all legal provisions providing effective immunity to police and other security forces, particularly section 197 of the Code of Criminal Procedure, which prohibits the prosecution of state officials without permission of the government.

Amend the Human Rights Protection Act to allow the National Human Rights Commission to independently investigate allegations of abuse by members of the armed forces.

Investigate and prosecute central government officials, including members of the armed forces, police, and the Assam Rifles found responsible for human rights violations.

Given the continuing failure of the military justice system to fully and transparently prosecute those responsible for human rights violations, prosecute fairly in civilian courts members of the armed forces and other security forces of all ranks implicated in serious rights abuses.

Prosecutions should not be limited to those directly responsible for abuses, but should include persons implicated as a matter of command responsibility, when superiors knew or should have known of ongoing crimes and failed to take action.

Protect from possible reprisals all witnesses, victims, and others who provide information for criminal prosecutions against government officials, including by establishing an adequately funded witness protection program.

Strengthen and enforce laws and policies that protect detainees from torture and other mistreatment, including strict implementation of requirements that all detainees be brought before a magistrate or other judicial authority empowered to review the legality of an arrest within 24 hours.

Allow independent humanitarian and human rights organizations full and unimpeded access to all army and paramilitary interrogation and detention centers.

Call upon the Manipur state government to promptly make public the progress of and findings from its investigations against individuals implicated in serious human rights abuses.

Urge the Manipur government to strengthen the Manipur Human Rights Commission so that it effectively pursues all complaints of human rights abuses. Ensure that the Commission uses all authority at its disposal including powers of suo motu investigation and subpoena.

Indian security forces involved in military operations should take all necessary steps to ensure compliance with international humanitarian law. India should ratify the 1977 Protocols Additional to the Geneva Conventions of 1949.

Thoroughly revise the training curriculum for police, army, and paramilitary forces operating in areas where there is internal conflict to include appropriate training on human rights issues, including lawful interrogation techniques and best practices. All training should be consistent with international human rights standards, such as the UN Code of Conduct for Law Enforcement Officials.

Ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of All Persons from Enforced Disappearance.

To the State Government of Manipur

Establish an independent, transparent, and impartial commission of inquiry into serious

violations of international human rights and humanitarian law by security forces.

Prosecute members of the Manipur police force who have been responsible for human rights violations. Call upon the Indian central government to promptly prosecute those within its jurisdiction found responsible.

Immediately make public the progress of and findings from investigations against individuals implicated in serious human rights abuses.

Strengthen the Manipur Human Rights Commission by promptly providing all information required to investigate allegations of abuse by the security forces and militants, ensure that all government officials respond to queries from the commission, and take appropriate action based on the commission's recommendations.

Strictly implement the D.K. Basu guidelines issued by the Supreme Court of India to strengthen and enforce laws and policies that protect detainees from torture and other mistreatment, including strict implementation of requirements such as providing an arrest memo and that all detainees be brought before a magistrate or other judicial authority empowered to review the legality of an arrest within 24 hours.

Immediately take action to determine the fate of those who "disappeared," including those arbitrarily detained in police stations, all persons detained in army camps or unofficial detention facilities, and those killed, and provide this information to family members.

To Armed Groups

Take all necessary steps to ensure compliance with international humanitarian law, specifically common article 3 to the 1949 Geneva Conventions and customary international humanitarian law.

End human rights abuses and laws of war violations against civilians, including killings, the use of threats, extortion, the indiscriminate use of landmines, and reprisals against individuals

suspected to be informers or supporters of another group.

End killings of members of immigrant communities, including those in Manipur seeking livelihood opportunities.

Publicly denounce abuses committed by any militant group and ensure that there is appropriate accountability for such abuses.

Cease using landmines, bombs, and other forms of attack in a manner that does not discriminate between military objectives and civilians.

Permit civil society organizations to undertake the full range of protection activities including investigations of abuses committed by militants.

Immediately stop the abduction and recruitment of children, forced or otherwise, into militant forces.

To Concerned Foreign Governments

Encourage India to repeal the Armed Forces (Special Powers) Act, 1958.

Urge the government of India and all militant groups to place human rights protection mechanisms at the center of any attempt to resolve the conflict. Press these parties to ensure responsibility for abuses, thereby bringing impunity to an end, without which no sustainable settlement will be possible. All parties should accept responsibility for the excesses committed by each of them, and ensure that an end to impunity and accountability for abuses is the touchstone for a sustainable end to the conflict.

Publicly and privately condemn violations of international human rights and humanitarian law by the Indian security forces.

MANIPUR

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