

Written Submission to Committee on Elimination of all forms of
Discrimination against Women:
CEDAW General Discussion on "Women in conflict and post-conflict situations"

Summary

**Narrow Definition of Armed Conflict by Government of India:
A Hurdle to Implementation of the Convention**

India has several ongoing and post-conflict areas within its territory. However, the Government of India (GOI) does not acknowledge these conflicts as armed conflicts and denies responsibility under UNSCR 1325. This situation is posing serious challenges in ensuring the Government's commitment to international obligations in conflict and post conflict situations with regard to women. The GOI terms conflict situations as 'disturbed areas, 'insurgency infested areas' etc. There is an urgent need for future international Resolutions and guidelines to expand the scope of the term *armed conflict* to include those situations that are termed differently by Governments in different parts of the world. This will enable diverse situations and contexts of conflicts to be encompassed in the general understanding of the term armed-conflict. An expanded understanding may be necessary for many State parties to fulfil their obligations in situations beyond the technical definition of armed conflict.

Written Submission to Committee on Elimination of all forms of Discrimination against Women for **CEDAW General Discussion on "Women in conflict and post-conflict situations"**

Narrow Definition of Armed Conflict by Government of India: A Hurdle to Implementation of the Convention

Introduction

India has several situations of armed conflict within the country. However, Government of India (GOI) does not officially acknowledge the prevalence of any armed conflict within its territory.

The CEDAW committee has in the past raised serious issues related to the situation of women living in conflict situation in India (2000 & 2007). It has particularly raised concerns about the operation of Armed Forces Special Powers Act (AFSPA)¹, which is operational in North East Region of India² (NER) and the State of Jammu & Kashmir. In 2006³, as part of the pre-session questions, the Committee asked the GOI to “inform the Committee on how Security Council Resolution 1325 is being implemented in India and how gender perspectives are being mainstreamed in military operations in “disturbed areas” and conflict areas”. The following is the response from GOI.

“Reply to Q.2

The contents of the Security Council Resolution 1325 have been circulated to relevant Ministries in the Government. There are no situations of ‘armed conflict’ within the territory of India, and hence the Security Council Resolution 1325 relating to Women in Armed Conflict is not applicable to India. The Indian Army has an excellent track record of protecting human rights, and is particularly sensitive to the rights of women and children, while carrying out its duties. With regard to the mainstreaming of gender perspectives in ‘disturbed areas’, the following actions are regularly undertaken...”

The CEDAW committee has been very pro-active in placing accountability on the GOI in the context of communal violence in the state of Gujarat. This was done during the constructive dialogue as well as in requisitioning the GOI, “in conformity with article 18, paragraph 1(b), of the Convention, to submit a follow-up report in January 2008 for consideration by the Committee later in 2008” due to insufficient information provided by the government during the constructive dialogue.

¹ The Committee reiterates the concerns and recommendations in the concluding comments adopted in 2000 and urges the State party to proceed without delay with their implementation. The committee requests the State party to provide information on the steps being taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest is not impeded. (CEDAW Concluding Comments: India 2007)

² NER consists of seven states of Assam, Manipur, Tripura, Meghalaya, Nagaland, Arunachal Pradesh and Mizoram

³ CEDAW; Thirty-seventh session 15 January – 2 February 2007; Responses to the list of issues and questions for consideration of the combined second and third periodic report of India

The work of women's groups in India, particularly those working in conflict areas has been boosted by the pro-active role played by the CEDAW committee. The Committee brought out issues of human rights violation of women suffered in different forms of armed conflicts within India. We are looking forward to further guidance of the Committee in this respect.

The stand of GOI with respect to armed conflict is one of the biggest hurdles that human rights organisations face in India. The government has consistently denied any armed conflict in the country and has not taken responsibility for addressing the fall out of various violent conflict situations within the country. Such positions of the government make it difficult for women's organisations and other human rights organisation to advance their work; very often these stands lead to harassment and branding of human rights defenders as anti-nationals. Those NGOs who work on implementation of CEDAW concluding observations related to conflict and UNSCR 1325+ are unable to make progress in their work given the government position on armed conflict. There are hardly any policies that comprehensively address fallout of armed conflict on women.

India does not recognize that it has internal 'armed conflicts'. But she does recognize that there are 'disturbed areas'⁴ and 'insurgency infected areas'. The term armed-conflict is seen by the GOI as an affront to the sovereign nature of the State due to factors such as closely linked histories of conflicts in South Asia and fragile relations with some of its neighbours.

Nature of Conflicts in India and Geo-political realities in South Asia

The GOI does not use the term *armed conflict*, especially internationally, to refer to situations of armed conflict within the country. The root causes of these conflicts in India are extremely complex and are linked to the social political and cultural history of the South Asia region at large. The conflicts are of various nature: movements for greater autonomy, for self-determination or secession, ethnic identity based, communal (caste and religious conflicts) and ideological.⁵ Most of these conflicts are inter-ethnic/community or vis-à-vis the State or a combination of both. According to estimates, almost one-sixth of India is undergoing some form of armed conflict and insurgency. Those areas include some states of North East region, Jammu & Kashmir, tribal districts of states like Chhattisgarh, Jharkhand, Orissa, Andhra Pradesh and Bihar. Economic and or political marginalisation, exclusion of women from decision-making, violence and patriarchal gender norms are some of the common characteristics of these conflict situations.

⁴ As originally enacted, the power to declare an area to be a 'disturbed area' was conferred only upon the State governments. By Act 7 of 1972, however, such a power was conferred concurrently upon the Central government. The reason for conferring such a power upon the Central government is stated in the 'Objects and Reasons' appended to the Bill, which reads thus:

"The Armed Forces (Assam and Manipur) Special Powers Act, 1958 empowers only the Governors of the States and the Administrators of the Union Territories to declare areas in the concerned State of Union Territory as 'disturbed'. Keeping in view the duty of the Union under Article 355 of the Constitution, inter alia, to protect every State against internal disturbance, it is considered desirable that the Central government should also have power to declare areas as 'disturbed', to enable its armed forces to exercise the special powers."

⁵ Armed struggles based on left political ideology like those of the Maoists against denial of justice and dignity of tribal and other marginalised people in some parts of the country.

All these conflict areas are highly militarised with presence of armed forces, government para military forces and armed insurgent groups. There is a steady increase in the number of armed groups in regions like the North East India. Disappearance of thousands of people and many cases of extra-judicial killings are reported from the North Eastern region and Jammu & Kashmir. These areas come under the draconian Armed Forces Special Powers Act, 1958 (AFSPA)⁶. Under AFSPA the security personnel wield unbridled powers and enjoy impunity in their operations in such 'disturbed' areas mentioned above. They are allowed to shoot with impunity. The security forces operating under this Act have been responsible for various human rights violations including sexual violence against women over the years. Decades after the inception of AFSPA, violence in the North East region and Jammu & Kashmir is increasing rather than decreasing.

CEDAW committee and other treaty bodies have recommended a review of AFSPA in the past. Apart from CEDAW, the Concluding Comments of ICCPR and the Universal Periodic Report also reflect the international concern about the Act still being operational. In the interactive dialogue, Eighth session of the UN Human Rights Council, 2-20 June 2008 - Review of India under the Universal Periodic Review, the Indian delegation highlighted the array of legislative and executive measures that exist in India for the effective implementation of safeguards to protect human rights. During the interactive dialogue, India stated that it would deal expeditiously with any violations by the armed forces. The Armed Forces Special Powers Act (AFSPA) continues to grant de facto impunity to members of the armed forces. Section 7 of the AFSPA specifies that "*no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act*". This is compounded by provisions in Sections 45 and 197 in the Code of Criminal Procedure, 1973 that stipulate that no member of the armed forces or the police can be prosecuted without the prior sanction of the central and state government.⁷

Despite the government's claim that "*the Government has always granted permission for prosecution of members of the security forces if it appeared that the rights of individuals had been infringed*", such permission has not always been forthcoming. Security forces in India continue to be responsible for grave human rights abuses

⁶ To meet the situation arising in certain parts of India on account of the partition of the country in 1947, the Government of India issued four Ordinances viz., the Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947; the Assam Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947; the East Punjab and Delhi Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947; and the United Provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947. These Ordinances were replaced by the Armed Forces (Special Powers) Act, 1948. The present Act was enacted by the Parliament in 1958 and it was known initially as Armed Forces (Assam and Manipur) Special Powers Act, 1958. The Act was preceded by an Ordinance called Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958 promulgated by the President of India on 22-5-1958. The Act applied to the entire State of Assam and the Union Territory of Manipur. After the new States of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland came into being, the Act was appropriately adapted to apply to these States.

⁷ India: Eighth session of the UN Human Rights Council, 2-20 June 2008: Review of India under the Universal Periodic Review: Amnesty International's reflections on the outcome at <http://www.amnesty.org/en/library/info/ASA20/012/2008/en> (last accessed on 7 July 2011).

during counter-insurgency operations, such as in Jammu & Kashmir, Assam and Manipur. Although, the Justice Jeevan Reddy Committee set up by the Prime Minister of India to review the AFSPA in 2004 had recommended repeal of the same, the Act is still operational in the country.

Non-state Actors have also been responsible for human rights violations and violence against women in the North East region and Jammu & Kashmir. In the state of Chhattisgarh where the government is engaged in war against Maoist insurgents, the State has sponsored *Salwa judum* cadres⁸. They are engaged in violation of human rights, killings, mass displacements and sexual violence on women. *Salwa judum* became increasingly violent and a source of terror⁹. The government has also launched similar strategy of arming the civilians in the states of Manipur in NE and Jharkhand.

Another serious impact of armed conflict is the conflict-induced displacement, which is taking place in the country. There are hundreds of thousands of people who are displaced by the on going violent conflicts in different parts of the country. There is no law that protects the rights of Internally Displaced Persons in conflict. Women in these situations face multiple discriminations. Women living in camps for prolonged periods, some times over decades, are particularly vulnerable to trafficking and unsafe migration. India does not have a policy on displacement and there are no programmes or policies devised specifically for those displaced due to armed conflicts.

In addition, various political, regional, caste-community and religious conflicts in India where the opposing sides use violence especially sexual violence against women. In 2002 India witnessed communal violence against Muslims in the state of Gujarat where members of the minority community were killed and women brutally raped and killed. The CEDAW Committee was especially constructive in asking for an extraordinary report from the Government of India during its reporting in 2007 and highlighting the State responsibility towards the victims of the violence and the long-term impact on their lives.

Women in India, live largely under patriarchal norms that expect them to strictly adhere to gender roles assigned to them. They are seen as 'keepers' of the culture and honour of the community they represent. Women are expected to play a subordinate role keeping the 'interests' of community and family; they are treated less than equal. There is poor representation of women in important decision making bodies like the Parliament, judiciary and other spheres in India. When it comes to women in conflict situations, these gender realities get deeply intertwined with the way conflicts are played out by different parties like the Government, non-State actors and the community at large. Women are targets of violence and sexual assault in various conflict situations within India.

Although, women have participated in peace making in different conflicts mentioned above, they are rarely seen at the negotiation table and other formal spaces. Their roles are seen as incidental by negotiating parties including the Government. Women

⁸ Private militia of tribal people working with the government forces to fight the Maoists.

⁹ This month (July 2011), the Supreme Court has declared as 'illegal and unconstitutional the deployment of tribal youths as Special Police Officers — either as 'Koya Commandos', Salwa Judum or any other force — in the fight against the Maoist insurgency' and ordered their immediate disarming.

also take part as combatants in North East India and in the Maoists insurgencies. However, their gendered and unequal roles are repeated even in the roles of combatants. Women are unequally treated during and after peace processes. Surrendered women combatants do not receive rehabilitation packages on par with men and they might face social stigma when they return to their community/society as an ex-combatant, which affect their ability to return to normal lives unlike their male counterparts.

Despite having several situations of armed conflict in the country, there are hardly any policies that comprehensively address the fallout of violent conflict on women in India. Policies and programmes are increasingly being formulated from a point of national security rather than from a human security perspective.

Conclusion

India and many neighbouring countries go by a narrow definition of the term *armed conflict* and evade international obligations. Given this situation, it is crucial that any discussion, on expanding governments accountability on protecting women's human rights in conflict situations, need to include realities of South Asia as illustrated by the case of India. Strategies need to be worked out to include ways of bringing those governments, who do not want to use the term *armed conflict* to refer to situations where there are ongoing conflicts, use of arms (by State and Non-State actors) and use of excessive State military power. Women are adversely affected due to the situation, and the State has an obligation to uphold and protect the human rights of people.

We strongly feel that there should be a way of bringing governments that are hiding behind definitions of 'armed conflict' to evade international accountability.

Future Resolutions and General Recommendations should be more flexible in using the term armed conflict because strong states like India believe that their sovereignty can be questioned and international laws be used for 'purely domestic issues' and they do not invite intervention in 'internal security' matters. India's reluctance to implement and the official statement on SCR 1325 (as not applicable to India) is reflective of the above apprehension.

There is an urgent need for expanding the understanding of the term *armed conflict* in the context of women and State obligations. In this context, future guidelines and General Recommendations should broaden the context to include those situations some Governments call by other names, which are otherwise equivalent to 'armed conflict' situations. They should go beyond existing definitions and understanding of the term *armed conflict* to include diverse situations as we experience them in India.

The women's groups in India, particularly those of us who work in conflict affected areas like in the North Eastern region of India see great opportunity in using CEDAW as a mechanism to furthering women's rights, expanding benchmarks for women's rights and demanding fulfilment of State obligations.

Thank you.