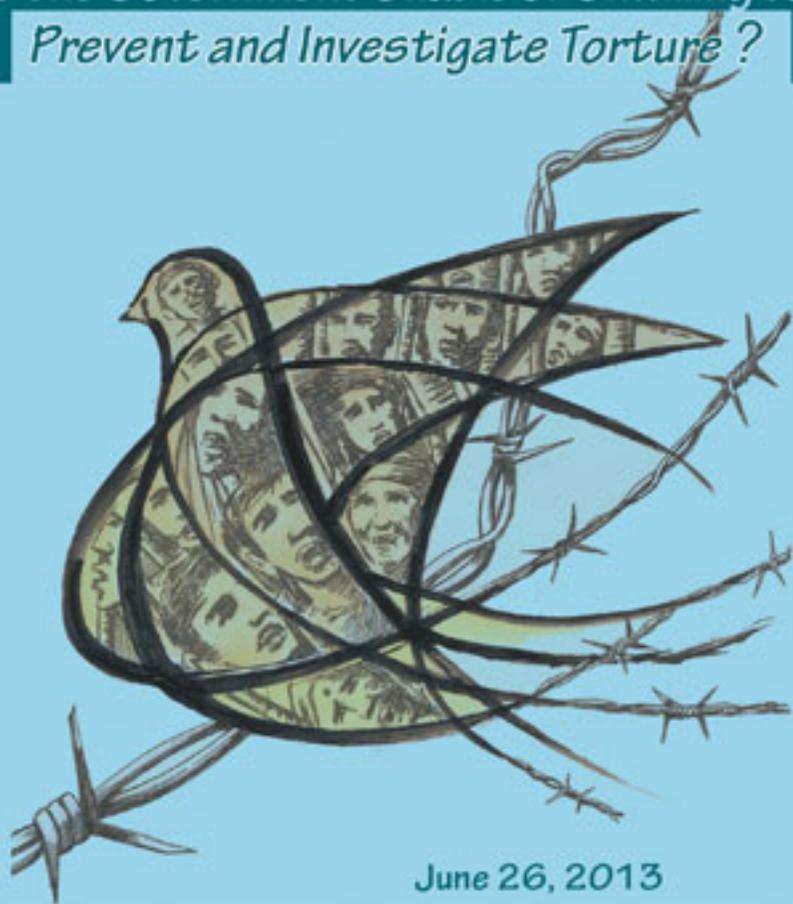


# NEPAL

*Is the Government Unable or Unwilling to Prevent and Investigate Torture?*



June 26, 2013



Advocacy Forum - Nepal

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Prevent and Investigate Torture?



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ADVOCACY FORUM - NEPAL

## **Nepal: Is the Government Unable or Unwilling to Prevent and Investigate Torture?**

First Edition 2013 (2070 v.s.)

*Publisher*

Advocacy Forum

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Nepal

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*Layout and Cover Design*

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Printed in Kathmandu, Nepal

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## FOREWORD

The year 2012 has seen a number of significant developments in relation to torture in Nepal. Some of them were positive, including the tabling in the Legislative Parliament of a Draft Penal Code and a new Anti-Torture Bill. However, neither were passed into law before the Constituent Assembly and Legislative Parliament were dissolved in May 2012. At the international level, a seminal report by the United Nations Committee Against Torture lambasted Nepal for its continuing acquiescence in the widespread and systematic torture of detainees in police custody throughout the country.

On the ground, Advocacy Forum staff have continued to implement the organization's integrated strategy to reduce the risk of torture in Government detention centers, regularly visiting 57 facilities in 20 districts, providing free legal aid and other support such as age verification for juveniles, medical and psychosocial support, to torture victims, clothes and sanitary products to those in need. AF has also been working with judges, police, public prosecutors, defense lawyers and medical professionals, organizing regular training and consultation meetings with these stakeholders of the criminal justice system, in order to enhance their understanding of the issues and their supports on preventing torture in Nepal.

We are glad to report that the level of torture reported by the detainees visited by AF staff has slightly decreased compared to the previous year; however the figure of 22.3% remains unjustifiably high. We also remain very concerned that figures for some districts are much higher than this, while the figure for juveniles has increased to 34.7%.

We are publishing this report to mark the United Nations International Day in Support of Victims of Torture, with the sincere hope that it will assist those authorities in Nepal who are genuinely committed to taking the necessary measures to criminalize, investigate, prosecute, punish and prevent acts of torture against detainees and to rehabilitate and support torture survivors.

We would like to extend our sincere thanks to Om Prakash Sen Thakuri and Dhurba Shrestha for writing this report and to Kate Hallam, Ingrid Massage and Dhiraj Kumar Pokhrel for editing it. We would like to thank Dr. Hari Bansh Tripathi, Director of AF, Advocates Kopila Adhikari, Ambar Raut, Badri Prasad Bhusal, Pushpa Poudel for their valuable inputs and support. We would also like to thank Babin Pokhrel for data processing. Finally, we would like to thank our detention visiting lawyers: Bhim Baral (Jhapa), Bal Krishna Acharya (Morang, Sunsari), Shyamananda Chaudhary (Udayapur), Jiwachh Sah (Siraha), Raj Kumar Mahaseth (Dhanusha), Pandav Prasai (Ramechhap), Rajendra Shrestha (Dolakha), Badri Bhusal, Nanibabu Khatri, Shova K.C. (Kathmandu, Lalitpur) Sarala Pandey, Deepak Sharma Poudel (Kaski), Ram Sharma and Nirajan Sharma (Baglung, Parbat, Myagdi), Yubak Regmi (Rupandehi), Om Prakash Aryal (Kapilvastu), Binu Shrestha (Banke), Kashi Ram Dhungana

(Bardiya), Bhim Bahadur Karki (Surkhet), Bir Bahadur Bista (Kanchanpur) including AF family for their tireless work.

Our highest appreciation goes to the detainees and torture survivors who have shared their experiences with us. We also express our sincere gratitude to all judges, public prosecutors, police officials, the Nepal Police Human Rights Unit and members of the National Human Rights Commission for their continuous support and assistance.

**Mandira Sharma**

Chairperson  
Advocacy Forum – Nepal

26 June 2013



## EXECUTIVE SUMMARY

Advocacy Forum (AF) has been visiting police detention centers for more than a decade; interviewing detainees, recording accounts of torture and ill-treatment by state authorities, and helping victims bring cases against the perpetrators. The evidence gathered is used to raise awareness among stakeholders and the public, and is presented annually on 26 June, to coincide with International Day in Support of Victims of Torture.

In 2012, AF visited 3,773 detainees held in 57 detention facilities in 20 districts, of which 3,384 were male, 384 female, 5 transgender, among which 930 were juveniles. Overall, 22.3% of those interviewed reported that they had been subjected to torture or ill-treatment as defined under the United Nations Convention Against Torture (CAT). Although this represents a slight decrease of 2.3% compared to 2011, figures for juveniles remained consistently high at 34.7%, increasing by 0.5% on the previous year. In some districts figures for juveniles rose alarmingly above 50% and even 60%. Emblematic cases included in this report also provide shocking accounts of torture suffered by adults and juveniles, men and women alike.

This year's report focuses on the extent to which the Nepal Government is, or rather is not, getting to grips with widespread

use of torture in its detention centers. To this end it reflects on the recent findings of the United Nations Committee Against Torture (the Committee), which concluded that torture continues to be systematically practiced across Nepal, while the Nepal Government has failed to legislate against torture or tackle impunity, to the point that it is guilty of acquiescing in the policies that shield perpetrators and allow the widespread use of torture to continue. The report also considers the findings of the Office of the Attorney General (OAG), whose recent study also confirms that the practice of torture continues to be a serious problem in Nepal.

Despite the best efforts of the judiciary, national human rights institutions, NGOs and the international human rights community, the Government of Nepal has still not criminalized torture, as per its obligations under the CAT. The report praises the efforts of those who continue to put pressure on the state and reflects on what was ultimately a failure by the Nepal Constitutional Assembly to put in place effective measures to prevent torture, dashing hopes that there would finally be legislation in place that is capable of punishing perpetrators and providing adequate reparations for victims. Until this is achieved, Nepal's laws remain wholly inadequate and perpetrators of torture continue to walk free.

Besides highlighting the systematic use of torture to extract confessions from detainees held in custody, monitoring by AF lawyers has also unveiled the alarming extent to which basic human rights and due process standards are routinely violated throughout the period of police detention. The report identifies a catalogue of abuses, including the denial of legal assistance, extended arbitrary detention, the falsification of documents, the

fabrication of charges, denial of medical assistance, the by-passing of the court system, and the inadequacy of legal aid provision, all of which were found to be common practices across the country, in direct contravention of international law and Nepal's own Interim Constitution. Many of these abuses were also identified in the OAG study. This is the context in which torture occurs, serving as a worrying reminder that systematic breaches of basic human rights standards extend far beyond physical abuse.

It is clear that the mechanisms and safeguards that do currently exist to monitor, investigate and prosecute human rights abuses and torture are not fit for purpose. Despite the enactment of new legislation to promote the role of the National Human Rights Commission, it continues to fall short of its mandate to investigate complaints of torture. It also continues to be used as an excuse by the Government not to ratify the Optional Protocol of the Convention Against Torture (OPCAT) or establish a fully independent national monitoring mechanism. Similarly, the OAG, the Nepal Police Human Rights Unit and the ad-hoc Special Investigation Units are all yet to demonstrate that they are capable of conducting the kind of thorough, independent and public investigations required for them to gain much needed credibility. Numerous barriers also remain within the criminal justice system, which make it disproportionately hard to prosecute perpetrators and stand in the way between victims and justice.

As things stand, the situation for torture victims remains bleak, while perpetrators continue to be shielded from accountability. The United Nations Committee Against Torture has sent a clear message to the Nepal Government that it must no longer acquiesce in the policies that allow torture to continue and must instead take decisive steps to tackle the systematic use of torture

and punish those who continue to perpetrate such human rights abuses.

Advocacy Forum urges the Government to prioritize the following recommendations aimed at preventing the use of torture against detainees in Nepal:

1. Repeal the Compensation Relating to Torture Act 2053 (1996) (CRT) as soon as possible and replace it with new anti-torture laws, in consultation with civil society, victims' groups and human rights NGOs.
2. Ratify the Optional Protocol to the Convention Against Torture (OPCAT) and form an independent National Monitoring Mechanism to monitor the human rights of detainees in government detention facilities.
3. Take steps to end the culture of impunity that persists by establishing adequate reparations for victims and proper punishments for perpetrators.
4. Establish an effective and impartial authority for the prosecution of torture, which is independent from the Government and open for victims to cooperate with without fear of reprisals.
5. Increase the powers of constitutional bodies such as the National Human Rights Commission to monitor, investigate and prosecute cases of torture and other ill-treatment, and ensure any recommendations are fully and promptly implemented.

6. Increase the effectiveness of the Human Rights Units of the security forces and require them to submit detailed annual reports to a civilian oversight body such as a National Police Commission.
7. Establish a robust vetting system for all security personnel so that perpetrators of human rights abuses are not able to hold positions of authority and scrupulously screen any security personnel put forward for participation in UN peacekeeping missions or UN jobs.
8. Establish an effective victim and witness protection mechanism.
9. Make the National Women's Commission and Dalit Commission independent statutory bodies with powers to investigate human rights violations against women and Dalits respectively.
10. Create a law allowing private prosecutions in cases of torture.
11. Ensure the independence of the Truth and Reconciliation Commission and the Commission for the Investigation of Disappearances, and ensure that they are not given powers to grant amnesty for grave human rights violations, including torture.



## RESEARCH METHODOLOGY

This report documents the findings of Advocacy Forum (AF) in relation to torture between January and December 2012. It draws on first-hand information gathered by AF lawyers during regular visits to 57 detention centers in 20 of the 75 districts of Nepal (Myagdi, Parbat, Baglung, Kaski, Rupandehi, Kapilvastu, Kathmandu, Lalitpur, Dolakha, Ramechhap, Banke, Bardiya, Surkhet, Kanchanpur, Jhapa, Morang, Dhanusha, Siraha, Udayapur and Sunsari). AF lawyers visited Ward Police Stations, Area Police Stations, Metropolitan Police Sectors, Metropolitan Police Circles, District Police Offices and Metropolitan Police Range in these 20 districts.

When selecting detainees for interview, AF lawyers gave priority to juveniles and women detainees. After selecting the detainees to be interviewed AF lawyers identified themselves and briefed the detainees about the work of AF and the rights of detainees as guaranteed under the Interim Constitution of Nepal and domestic and international law. If the victims were interested they were interviewed and if not, they were only briefed about their rights.

The interviews with detainees were guided by questionnaires especially prepared with the consultation of national and

international experts. In some detention centers AF lawyers conducted interviews in a separate interview room. If a confidential interview room was unavailable, as is the case in several detention centers, they conducted interviews while standing at the gates of detention cells, often in the presence of police officials.

The data collected through the questionnaire was processed using the Statistical Package for the Social Sciences (SPSS) and is presented throughout this report. This has been complimented by more in-depth and qualitative research obtained through the process of providing legal representation to detainees and through the filing of torture cases before various courts behalf of torture survivors. This information is presented throughout the report, in the form of accounts given by victims and supported by photographic evidence.

# INTRODUCTION

In October 2012, the United Nations Committee Against Torture (the Committee) published a report of its findings after a six-year long confidential inquiry into allegations of widespread torture in Nepal from November 2006 and May 2012. The Committee concluded that “torture is being systematically practiced, and has been for some time, often as a method for criminal investigation and for the purpose of obtaining confessions, in a considerable part of the territory of Nepal”.<sup>1</sup>

The Committee noted that the Nepal Government had claimed that it does not approve of acts of torture and that it is committed to ending impunity for the perpetrators of torture; however it added that in its determination, Nepal has not provided the Committee with clear and practical evidence corroborating this and that Nepal had made no substantial progress towards addressing impunity for conflict-era human rights violations and abuses.<sup>2</sup>

<sup>1</sup> United Nations Committee against Torture Annex XIII, Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party, 46th Session (9 May-3 June 2011) (hereafter CAT report), Section V, para 100.

<sup>2</sup> CAT report, para 103.

The Committee found that torture had not occurred fortuitously in a particular place or at a particular time, but rather it was habitual, widespread and deliberate in at least a considerable part of the country. The Committee acknowledged that the systematic use of torture may not be the direct intention of the Government. Rather, it may be the consequence of factors which the Government has difficulty in controlling and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration of Nepal. Inadequate legislation which allows room for the use of torture may also add to the systematic nature of this practice.<sup>3</sup>

The Committee found that Nepal failed to ensure the effective prosecution of those responsible, even in cases in which compelling evidence of guilt was gathered by Non-Governmental Organizations (NGOs), the National Human Rights Commission (NHRC), or in cases where national courts had established the responsibility of those involved. It found that the state had failed to put an end to practices such as the falsification of police and prison registers, the refusal by police to register complaints by way of First Information Reports (FIRs), or the detention of individuals for periods longer than 24 hours before presenting them before a judge. It also found that the state had failed to ensure that detainees receive medical examinations conducted by independent physicians, that judges exclude confessions obtained through the use of torture, or that officials accused of torture or extrajudicial killings are suspended and banned from future promotions.

<sup>3</sup> CAT report para. 39 and 163.

The Committee also reported that Nepal has failed to amend provisions that violate basic due process guarantees, by allowing detainees charged under various laws to be tried by Chief District Officers (CDOs), who have quasi-judicial powers but are not independent from the State Executive.<sup>4</sup> It has also failed to implement court orders and recommendations by the NHRC to investigate and prosecute the perpetrators of torture and other human rights violations.

On the basis of these findings, the Committee concluded that the “actions and omissions of Nepal therefore amount to more than a casual failure to act”. Moreover “it demonstrates that the authorities not only fail to refute well-founded allegations but appear to acquiesce in the policy that shields and further encourages these actions, in contravention to the requirements of the Convention.”<sup>5</sup> Such practices and acts of negligence have served to contribute to, and reinforce the continuing and systematic practice of torture in Nepal, while statements renouncing the use of torture and condemning impunity are not independently sufficient to address these shortcomings.

As part of its “Tackling Impunity through Advocacy on Legal Reform and Monitoring of Human Rights and Judgment Enforcement Programme”, the Office of the Attorney General (OAG) also conducted research into the treatment of detainees in Nepal. The research, which aimed to “study the status of implementation of human rights provided by national and

<sup>4</sup> These laws include the Local Administration Act, 2028 (1971), the Some Public (Offences and Penalties) Act (1970), the Arms and Ammunition Act 2019 (1962), the Black Marketeering and Some Other Social Offences (and Punishment) Act 2032 (1975), the Essential Goods Protection Act 2012 (1955), the Explosives Act 2018 (1961) and the Public Security Act 2046 (1989).

<sup>5</sup> CAT report, para 104.

international instruments” and “monitor the implementation of the decision of the Supreme Court of Nepal pertaining to the rights of prisoners and detainees”, was conducted in late 2012 – early 2013. It included 10% of the total population held in both detention centers and prisons in 10 different districts of Nepal.<sup>6</sup>

Although the report found that “almost all” of the detainees who participated in the study were “detained legally” and concluded that the overall picture was “encouraging”, some of the findings – particularly in regards to the treatment of detainees, conditions of detention, and the right to a fair trial – are all cause for serious concern. In this regard, the report concluded that “Ill treatment of detainees directly infringes on each person’s fundamental right to fair trial and if this ill treatment is proved in court, the judge functioning under a human rights friendly constitution of Nepal will be bound to release the suspect no matter how grave the crime he/she may have committed. If ill treatment in state custody is disregarded then not only will the trials in courtrooms be a sham but the risks of there being miscarriage of justice will be much higher; this will wither faith in justice and cripple judicial mechanisms.” Furthermore it affirmed that “in a state that is a ratifying party of the CAT and also constitutionally prohibits torture as well as cruel inhumane and degrading of all persons, no ill treatment is justifiable”.<sup>7</sup>

<sup>6</sup> Annual Report of the Office of Attorney General, Fiscal Year 2068.069, Vol 10, Year 2, no. 4, Ganapati Upset Press, Kathmandu. Available at: <http://attorneygeneral.gov.np/document/Bulletin/Bulletin10/final%20Buletine%2010.pdf>

Please note: the research carried out by the OAG included data gathered from detainees held in police custody and prisons. In contrast the research carried out by AF does not include any data from prisons. This report will therefore only include OAG research relating to the 10 detention centers.

<sup>7</sup> OAG report, p. 83.

In contrast to the OAG, whose study was a one-off exercise conducted over a very limited time period, AF has been visiting Government detention facilities and documenting the treatment of detainees on a regular basis, for many years. This report presents research into the torture and other cruel, inhuman or degrading treatment of detainees, gathered by AF in 20 Nepali districts, over the period from January 2012 to December 2012.<sup>8</sup> It also analyzes state responses to reports of torture and seeks to compare its findings with those of the OAG, though it is acknowledged that only two districts - Kathmandu and Lalitpur – were included in both studies.

The report concludes that the state authorities in Nepal, which include the OAG as a part of the state apparatus, do indeed continue to acquiesce in policies that shield perpetrators of torture and therefore by implication condone its practice. The Nepali state, it appears, is either unable or unwilling to address the widespread and continuing practice of torture in government detention facilities and the culture of impunity that persists throughout the country. If positive changes are to be achieved, those responsible for these failures must be held to account.

<sup>8</sup> The districts included in the research carried out by are: Myagdi, Parbat, Baglung, Kaski, Rupandehi, Kapilvastu, Kathmandu, Lalitpur, Dolakha, Ramechhap, Banke, Bardiya, Surkhet, Kanchanpur, Jhapa, Morang, Dhanusha, Siraha, Udayapur and Sunsari.



# TRENDS AND PATTERNS OF TORTURE

## 1. RECENT TRENDS OF TORTURE

In 2012, Advocacy Forum visited a total of 3,773 detainees in 57 places of detention in 20 districts of Nepal. Out of these, 841 detainees (22.3%) claimed that they had been subjected to torture or other form of cruel, inhuman or degrading treatment during their detention.<sup>9</sup> For the purposes of this analysis, torture is defined as per Article 1.1 of the Convention Against Torture (CAT) and Other Cruel, Inhumane or Degrading Treatment is used with reference to Article 16 of CAT.<sup>10</sup>

The figure of 22.3% represents a decline of 2.3% in comparison to 2011, when 24.6% detainees reported that they had been victims of torture while in detention.<sup>11</sup> Six-monthly data for 2012 also

<sup>9</sup> See the torture percentage of Jan-Dec 2012 in Table 1 in Annex 1 of this document

<sup>10</sup> Article 1.1 of CAT states that “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. Acts which fall short of torture can still constitute “cruel, inhuman or degrading treatment or punishment” under Article 16 of CAT.

<sup>11</sup> In 2009 and 2010 the figures were 20.1% and 19.3% respectively.

shows a general decrease in the use of torture against detainees, with the figure of 24% for January to June dropping to 20.6% between July and December.<sup>12</sup>

### Comparison of torture percentage during 2011 and 2012

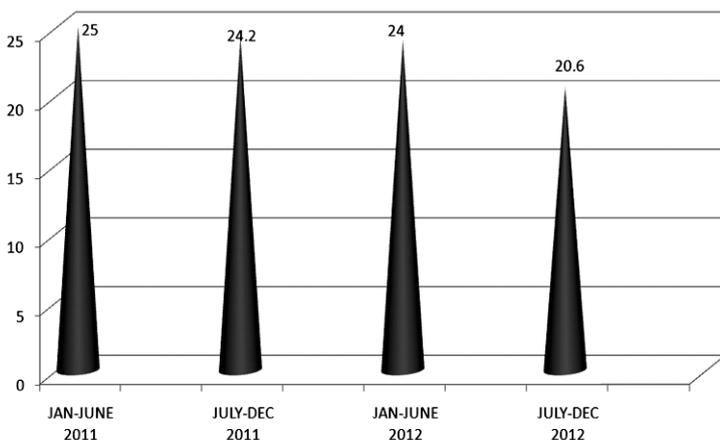


Figure 1: Trends in allegations of torture during 2011 and 2012

According to the finding of the Office of the Attorney General (OAG), 60% of detainees who were questioned reported that police were “behaved well”. However, 35% reported that they had been either physically or verbally abused by police while being transported to the detention center after being arrested. Once in detention the OAG figures suggest that while the majority of detainees were not mistreated, the percentages of detainees suffering either physical or verbal abuse in some centers were as high as 82%.<sup>13</sup> Across all detention centers studied, the OAG

<sup>12</sup> Advocacy Forum , ‘Recent Trends and Patterns of Torture in Nepal, Briefing, July to December 2012’ Available at <http://advocacyforum.org/downloads/pdf/publications/torture/torture-briefing-july-december-2012.pdf>

<sup>13</sup> This figure was recorded in Gorkha Detention Center, OAG Report p. 8.

reported that just under 15% of detainees “described receiving treatment that amounts to torture”. Such treatment included “beating by hands and fists, by sticks on the soles of the feet and kicking while wearing police boots”.<sup>14</sup>

AF records shows that torture and ill-treatment also included beating with sticks on hips, back, thighs, shoulders, feet and other parts of body; beating with strips of rubber from a tires, wire or iron rods inserted inside plastic pipes, rolling lengths of iron or wood over the thighs; stamping or stepping on the body and head of detainees while forcing them to lie down; pulling hair, forcing them to stand in difficult posters for a prolonged period of time; abusive language; threats of more torture, electric shocks and even death.

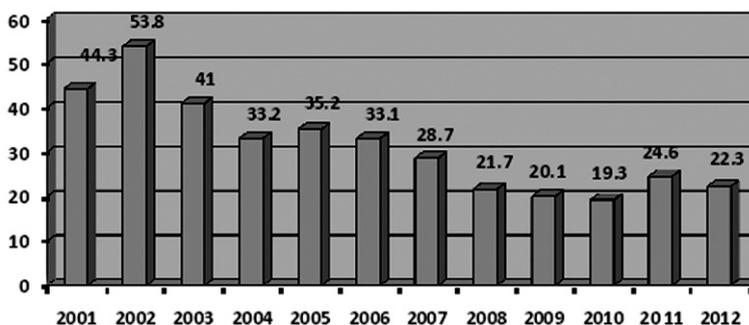
## 2. LONG-TERM ANALYSIS OF TORTURE TRENDS (2001-2012)

Since 2001, when AF first began monitoring the treatment of detainees in detention centers in Nepal, there have been fluctuations in the reporting of torture by detainees. The years 2006-2010 saw a reduction in the use of torture, with figures gradually falling in the aftermath of the decade-long armed conflict, particularly after the signing of the Comprehensive Peace Agreement (CPA) in November 2006. However; this positive trend ended in 2011 when the figure increased by 5.3% compared to 2010.<sup>15</sup> In 2012, the figures show a decline of 2.3% compared to

<sup>14</sup> OAG Report, p8

<sup>15</sup> “Torture of Women: Nepal’s Duplicity Continues, p. 11 for further comments on why torture increased during 2011, available at: [http://advocacyforum.org/\\_downloads/torture-of-women-report-june-26-2012-english.pdf](http://advocacyforum.org/_downloads/torture-of-women-report-june-26-2012-english.pdf)

2011; however this figure remains higher than was recorded over the period of 2008-2010.



*Figure 2: Yearly torture trends from 2001 to 2012*

These trends have been confirmed by the United Nations Committee Against Torture report, which found that there had been a significant reduction in the use of torture since the end of the armed conflict, but a problematic resurgence at the end of the decade.<sup>16</sup>

### 3. DISTRICT LEVEL TORTURE TRENDS (2012)

Another worrying trend that can be observed from the data gathered by AF in 2012 is that some districts reported a significantly greater prevalence of torture than others, with figures showing a considerable variation in the percentage of detainees reporting torture, across the 20 AF working districts.

Out of the 20 districts included in the research, Kaski, Kathmandu, Sunsari, Banke and Bardiya were identified as having the five highest figures for the percentage of reported incidents of torture.

<sup>16</sup> CAT report, para 98.

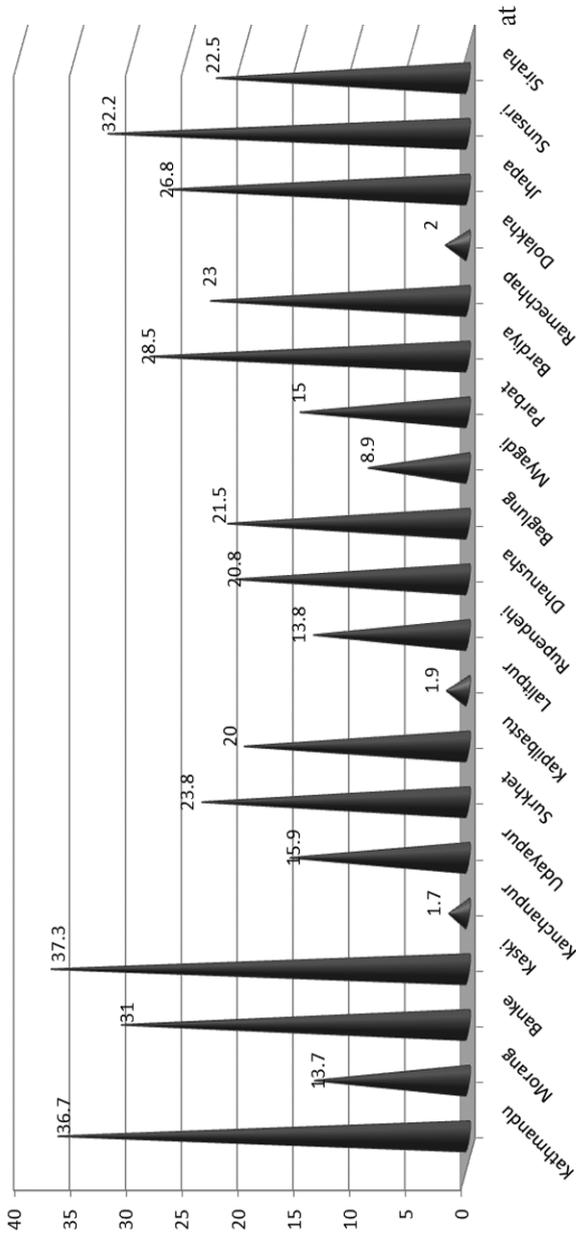


Figure 3: Trends in reports of torture in 20 districts during 2012

highest figures (36.7%), with 156 out of 425 detainees reporting its use against them. Sunsari district also recorded a high percentage of 32.2%, with 19 out of 59 detainees reporting the use of torture against them. Finally, Banke and Bardiya both have high figures, the former recording a total of 79 out of the 225 (31%) and the latter recording 35 out of 123 (28.5%).<sup>17</sup> These unjustifiably high figures are of serious concern, all the more so because they exist despite the enormous efforts of AF to highlight and challenge the prevalence of torture in detention facilities through intensive lobbying and advocacy work in all the 20 districts concerned.

At the other end of the spectrum, Kanchanpur, Lalitpur and Dolakha districts recorded very low percentages of torture, of 1.7%, 1.9% and 2% respectively. This is in stark contrast to the figures above and serves to demonstrate that the prevalence in the practice of torture in detention centers across Nepal is by no means uniformly high.

#### 4. TORTURE TRENDS ACCORDING TO CASTE AND ETHNIC BACKGROUND

From more than a decade of its experience in the field of custody monitoring, AF has established that torture is a more common phenomenon among detainees from underprivileged and ethnic minority groups. The graph below shows the percentage of detainees reporting torture according to their caste or ethnic origin, compared to the percentage of the total population of detainees claiming torture.

<sup>17</sup> See table 3 in Annex 1 for details of torture percentages in all 20 districts.

## Trends and Patterns of Torture

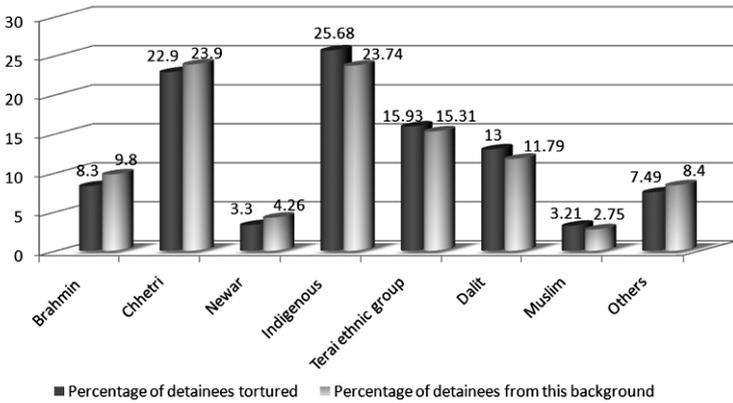


Figure 4: Torture on detainees according to caste and ethnic background

Out of the overall number of detainees claiming torture during this reporting period, 25.68% comprised of people belonging to indigenous communities, however they represent only 23.74% of the total number of detainees interviewed. Similarly, for the Terai ethnic group, they represented 15.93% of the overall number of torture incidents reports; however they only represented 15.31% of the overall population included in the study.<sup>18</sup> The Dalit community constituted 13% of reports of torture, but just 11.79% of the total number of detainees included in the study.

In contrast, the Newar group made up just 3.3% of the total number of reported incidents of torture, despite constituting 4.26% of the total population included in the study. Similarly the Brahmin group constituted 8.3% of the total reported incidents of torture, while constituted 9.8% of the total population. The Chhetri group reported 22.9% of the incidents, but constituted 23.9% of the sample group.

<sup>18</sup> See Annex 1, Table 4 for more details.

## 5. ANALYSIS ON TORTURE TRENDS BASED ON CHARGES

Data collected by AF shows that people held in police detention on the basis of some charges or allegations are at a higher risk of being tortured than others. Those held on suspicion of possessing explosives are most likely to be tortured (66.7%), followed by robbery (55.6%), arson (45%), kidnapping (44.4%), possession of arms and ammunition (41.3%) and theft (32.9%). The two most common charges under which people are held are public offences and possession of illegal drugs. AF found that of the 1,073 people who were detained on allegations of public offences in 2012, 250 (23.3%) reported torture or ill-treatment. Similarly, out of the 693 people held on allegations of drug possession, 134 (27.9%) reported being tortured. Finally, a sizeable number of people (127 out of 456) who were detained without any specific charges brought against them reported being tortured while in custody, which is equivalent to 23.7%.<sup>19</sup>

## 6. TORTURE TRENDS ACCORDING TO GENDER

Out of the 3773 detainees interviewed by AF in 2012, 3384 were male, 384 were female and 5 were transgender. 23.8% of the men interviewed claimed that they were tortured or ill-treated, compared to 9.4% of women and 20% for transgender.<sup>20</sup> Men were therefore the most likely gender to be victims of torture; however the figures of nearly 10% for women and 20% for transgender both remain wholly unacceptable.

Unfortunately, the OAG report did not present torture figures according to gender. It did however report that in some cases

<sup>19</sup> See Annex 1, table 5 for more details.

<sup>20</sup> See Annex 1, table 2 for gender-wise torture percentage.

women had been arrested by male officers and had been handcuffed to other detainees, forcing them to form a human chain with other detainees.<sup>21</sup> Research carried out by AF found that in fact the vast majority of women detainees had been arrested by male police officers. Although it is not against the law for male officers to arrest women, Section 14 (4) of the Government Cases Act, 2049 (1992) provides that woman police personnel should be responsible for the arrest of women, wherever possible.

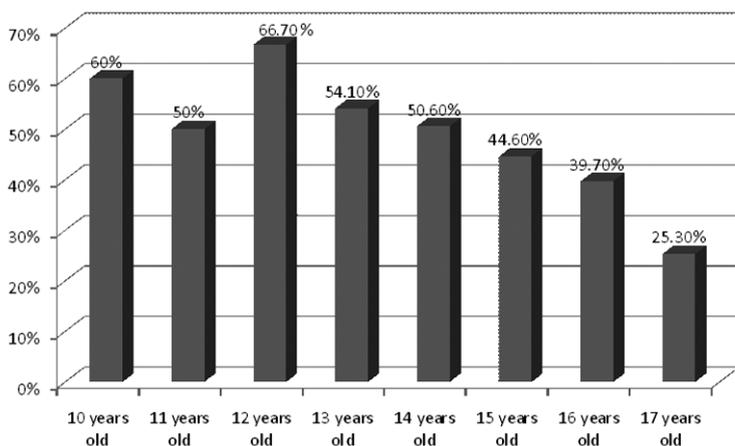
## 7. TORTURE TRENDS ACCORDING TO AGE AND THE TREATMENT OF JUVENILES

Despite strong advocacy and lobbying against the torture of juveniles (those aged between 10 and 17 inclusive) in police detention facilities and the adoption of the Juvenile Justice Regulations (2006) enacted for the protection of juveniles held in detention, the research undertaken by AF confirmed that they remain at a particularly high risk of being tortured or ill-treated while being held in custody.

Based on the data collected during 2012, AF found that 34.7% of the 930 juveniles interviewed reported being tortured or subjected to other forms of ill-treatment. This is a markedly higher rate than that of the overall population of detainees during the same period, which stands at 22.3%. This confirms that the police authorities appear to torture or ill-treat juveniles more frequently than they do adults. This finding is supported by those of the United Nations Committee Against Torture, which found that “juveniles in custody remain particularly vulnerable to torture in Nepal”.<sup>22</sup>

<sup>21</sup> OAG Report, chapter 2, page 5.

<sup>22</sup> Committee against Torture Annex XIII, Report on Nepal, Section V, para 99.



*Figure 5: Torture Trends according to Age*

AF data for 2012 shows that of all juveniles, those aged 12 were most likely to be tortured or ill-treated, with a staggering figure of 66.7%. The figure for 10 year olds was almost as high at 60%, while similarly high figures were recorded for 11 year olds (50%), 13 year olds (54.1%) and 14 year olds (50.6%).

Most of the juveniles who reported being tortured were arrested for relatively minor of public order offenses, while many others were eventually released after no charges were brought against them. According to the data, out of 327 juveniles held under public offence 106 (32.4%) reported that they were tortured or ill-treated. Similarly, among the 191 juveniles who were arrested without any specific charges against them 95 (49.7%) claimed that they were subjected to torture or other ill-treatment.<sup>23</sup>

<sup>23</sup> See table 8 for more details.

## 8. TORTURE OF JUVENILES PER DISTRICT

In 2012, Bardiya district recorded the highest proportion of juveniles aged between 10 and 17 reporting being tortured, with 68.8% of those interviewed reporting such treatment. Similarly, Ramechhap district recorded the worryingly high figure of 66.7%, while Kathmandu recorded 57.6%, Jhapa followed with 43.5%, then Dhanusha with 41.7% and Banke with 40%.<sup>24</sup> At the other end of the scale, Kanchanpur district recorded a lowest figure of just 7.7%, with Siraha slightly higher at 11.1% and Morang at 14.3%. Although still clearly unacceptable figures, they are in stark contrast to those mentioned above.

When comparing torture and ill-treatment figures for juveniles, to figures for the general detainee population on a district by district basis, there is no clear correlation between the two sets of data. The worst offender for the use of torture, based on figures for the overall population was Kaski district (37.3%). However it does not appear in the top 6 for juveniles, with a figure of 29.3%. Although this figure is still very high, it means that contrary to the overall trend, juveniles are not more likely than the average population to be tortured in this district. In contrast, both Kathmandu and Bardiya district scored highly for torture rates among the general population and among juveniles. Figures for Kathmandu show that juveniles were 20% more likely to be tortured than the general population, while this figure rose to 40% for Bardiya district. These are shocking statistics showing that it is significantly more dangerous to be a juvenile in detention than an adult in some parts of Nepal but not others.

<sup>24</sup> See table 7 for more details.

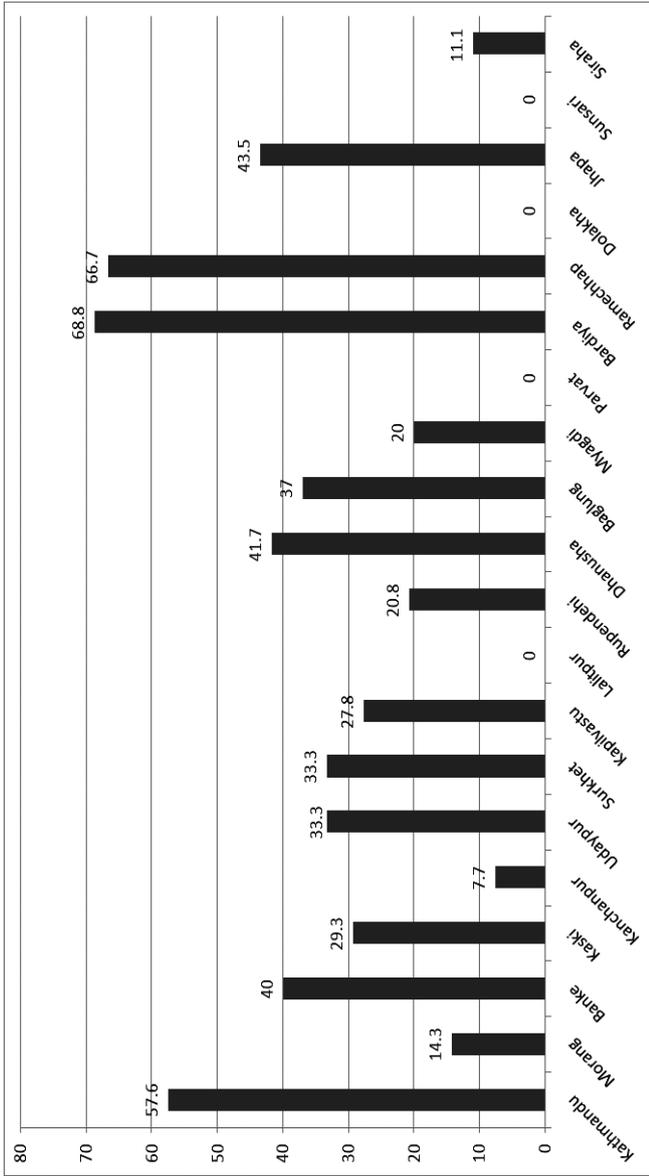


Figure 6: Torture of Juveniles according to District

Sadly, the OAG report does not discuss the detention of juveniles in police custody, nor the fact that they are often tortured and ill-treated. Allowing for the fact that eight of the districts it visited are different from those where AF conducts monitoring, it nevertheless does not explain this discrepancy completely, as Kathmandu and Lalitpur Districts feature in both and therefore the OAG study should at least have picked up on the prevalence of torture and other ill-treatment in those districts.

Besides the quantitative data gathered from juvenile detainees, AF also found a number of alarming trends in an overwhelming number of cases:

- a) Juveniles are highly likely to be placed into immediate police detention and rarely released on bail, despite provisions in national and international standards in favour of bail
- b) Juveniles are generally not kept separately from adult detainees in detention centers
- c) Juveniles are often subjected to both mental and physical torture or ill-treatment until they confess to criminal activity
- d) There are many breaches of the Juvenile Justice Regulations, more particularly the requirements that investigations of juveniles are conducted in a child-friendly environment and with the parents or guardians present during all stages of investigation, for juvenile cases to be heard by special juvenile benches and for cases involving juveniles to be decided within 120 days.

## 9. EMBLEMATIC CASES

The following three cases are emblematic of the 841 cases of torture and ill-treatment recently recorded by AF.

### **CASE NO: 1**

Bhupendra (name changed), a 14-year-old from Dhanusha district was assaulted by police during his arrest and then tortured while in police custody at the Area Police Office (APO), Aurahi Dhanusha



district on the evening of 7 March 2013, following a minor altercation with another boy.

After the fracas he was confronted by the boy's elder brother and brother-in-law who called the police. He ran away and was hiding out at his relative's house when four or five policemen arrived, along with the complainants. The policemen arrested him and started beating him with a torch light, sticks and kicked him with their boots in front of his family and neighbors who had gathered there after police arrived in the village.

He was then taken to the APO in Aurahi where he was beaten again by a number of policemen during the night.

They beat him with sticks on his back, legs, head and other parts of his body. After a short interval, they started again punching him with their fists and kicking him with boots against his chest, stomach and face. He



almost fell unconscious, at which point they stopped beating him and left him alone in his cell.

The following morning, police transferred him to the District Police Office (DPO) in Dhanusha on a motorcycle. The same day, his uncle arrived and after talking to police he was taken to Zonal Hospital, Janakpur in a police van. A doctor treated him and gave him some medicine. After returning to the DPO he was released without charge and taken home by his uncle. The following morning he woke up to go to the toilet, but he fell unconscious and was rushed to hospital.

After meeting him at the hospital, AF lawyers found large black marks on the back of his right thigh, two small injuries near his right ankle, a bandage on his left toe, a black mark on left hand, a long scar below his left eye, big blue and black marks on his back and some scratches on other parts of body. He needed a urinary catheter to pass urine. The victim was not able to speak clearly and complained of pain during the conversation with AF lawyers.

## **CASE NO: 2**

Mr. Khimlal , 22, from Rukum district, was apprehended by members of the public at Prithivi Chowk, Pokhara, Kaski district on 9 September 2012, and handed over to



police after snatching a gold chain from a woman in the street. He was taken to the District Police Office (DPO), where he was beaten by six policemen with plastic pipes on his thighs, back, and soles of his feet.

Even after confessing to the crime, he was taken to the Litigation Section where he was forced to lay on a table while three policemen tortured him by rolling an iron rod over his thighs for approximately half an hour. Then they grabbed him by the hair and swung him around, verbally abusing him and beating him for about two hours while interrogating him about other thefts and his friends. At around midnight on the same day he was taken to Paschimanchal Zonal Hospital, Kaski district for a medical check-up where the doctor did a general check-up but did not ask about torture by the police.

The following morning, four unidentified policemen took him to a building still under construction behind the DPO where they handcuffed him, forcing his knees through his hands and inserting a stick through his bent knees in order to hang him in the air. They then beat him

with plastic pipes on his feet, punching him with their fists and kicking him with their boots for about 2 hours, asking him the same questions as the previous day.



Later that day he was taken to the District Court in Kaski for remand. When the judge asked him about

his treatment in police custody he told him he had been tortured, but as his hands were handcuffed he could not show his bruises and wounds. As he was not aware that he could file an application for a physical and mental examination he did not request one, and nor did the Judge order one.



AF lawyers found visible blue marks on the backs of both of his thighs, a blue circle around his left eye, one big bruise on the sole of his left foot, wounds on both shoulder blades, three stitches on his forehead, a wound

which had started to heal on his left knee and a blood clot on his finger. The detainee was terrified of police and

complained that due to the torture he had not been able to walk for two days, suffering from shooting pains in his body and sleeplessness.

### **CASE NO: 3**

On 18 April 2013, a group of villagers from Khotang district visited Halesi Temple, as part of a pilgrimage. During the visit, some of the pilgrims had a quarrel with a shopkeeper while buying holy scarves outside the temple. When the police arrived with batons, the villagers dispersed, returning to the hotel where they were staying. Altogether 9 pilgrims were arrested at the hotel, after which they were taken into custody where they were tortured and ill-treated by police before finally being released later that day. As a result of their treatment, one villager suffered a broken leg and another suffered a broken hand.

#### ***Ganjuram, 27***

One of the pilgrims, Ganjuram (named changed), a 27-year-old man, who was involved in the quarrel, was charged at by the police carrying batons. He ran away back to his hotel, where he was arrested by three policemen. They hit him with a rifle butt and beat him with sticks on his back and bottom. Then they took him to nearby Halesi Police Station where they handcuffed him to another detainee with a single handcuff and took them both to another room where they were forced to lie

down while a policeman stepped on his head with boots and beat him again with a stick. Due to the torture, his right hand was broken. Then, the police personnel forced him to sign a statement before being released at around 5 pm the same day. The following day, he visited the mission hospital in Okhaldhunga district for treatment before returning home.

***Dinesh, 40***

After running away from the police baton charge, he was also arrested at his hotel and dragged to the nearby police station where he was severely beaten by some police personnel. The torture left his left leg broken. He was eventually taken to a local health post, where he was then referred to a hospital in Kathmandu for further treatment.

***Milan, 24***

He was also arrested by four unidentified policemen at the hotel on the same day. One of them pulled his hair, while two others held his hands, and another beat him from behind with a stick on his back, legs and body. After reaching the police station, he was taken into a room and handcuffed with his hands behind his back. He was forced to lie on the floor while someone stepped on his head. Then they beat him with sticks and threatened him with reprisals, forcing him to sign a statement saying that he would pay for the medical expenses of two villagers

who had sustained serious injuries. At around 5 pm the same day, he was finally released with his fellow pilgrims.

***Sabina, 18***

After she visited Halesi Temple she saw that some other people from her village were involved in a heated discussion with a shopkeeper. Choosing not to get involved she returned to the hotel with her friend, where they changed their clothes before lunch. On her way downstairs she was stopped by a policeman and police woman who arrested her and verbally abused her and her friend. She was taken to Halesi Police Station where she was beaten by a woman police officer with a stick about 6 or 7 times on her back, bottom and legs. They detained her there for the whole day finally releasing her without charge at around 5 pm.

# STATE DUTY TO TAKE EFFECTIVE MEASURES TO PREVENT TORTURE

In May 1991, Nepal ratified the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Despite this, Nepal has so far failed to criminalize the use of torture, as per its obligations under this Convention. This failure is also a breach of Article 26 and Article 33 (m) of the Interim Constitution of Nepal (2007) (IC).<sup>25</sup> Furthermore, in 2007, the Supreme Court of Nepal issued a judgment, ordering the Nepal Government to criminalize torture. Despite this, the Nepal Government has so far failed to take the necessary steps to achieve this objective. Meanwhile, data collected by AF shows that torture continues to be systematically practiced in police detention centers throughout Nepal and that those responsible continue to escape accountability.

<sup>25</sup> Article 26 of the IC "Right against Torture" states:

(1) No person who is detained during investigation, or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment.

(2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

Article 33 (m) of the IC states that Nepal must "effectively implement the international treaties and agreements of which the State is a party".

## 1. CURRENT ANTI-TORTURE LAW IN NEPAL

The only piece of legislation that currently deals with torture-related issues in Nepal is the Compensation Relating to Torture Act 2053 (1996) (CRT).<sup>26</sup> However it has been heavily criticized by numerous international human rights authorities, organizations and NGOs, including the United Nations Committee Against Torture for being however totally incapable of preventing torture or providing adequate remedies for victims.

The CRT Act has been widely criticized for a variety of different reasons, including: its narrow definition of both “torture” and “victims”, its 35-day statutory limitation period for filing a case, impunity for command responsibility and individual liability, penalties for filing “false” cases, Government attorneys pleading on behalf of alleged perpetrators, lack of adequate medical treatment for torture survivors, inadequate compensation for torture survivors, and the fact that compensation is paid by the state (and therefore the public) on behalf of perpetrators.<sup>27</sup> As a result, the CRT has been criticized, not just for failing to adequately combat the use of torture, but for actively helping to prolong its practice and encouraging the culture of impunity that persists.<sup>28</sup>

<sup>26</sup> Section 3 (1) of the CRT ‘Torture Prohibited’ states that “Any person, who has been detained for the purpose of investigation, probe or trial, or for any other reason, shall not be subjected to torture”. Please note that the CRT Act is also known as the Torture Compensation Act, and has been referred to as such in previous AF reports. In this report, AF is using the CRT Act description in line with the practice of the UN, including the Committee against Torture.

<sup>27</sup> Please refer AF report “Hope and Frustration,” p. 21 – 36, available at: <http://advocacyforum.org/downloads/pdf/publications/june26-report-english-2008.pdf>

<sup>28</sup> For a detailed analysis of the CRT Act, see AF Torture Report (2009) ‘Criminalize Torture’ Available at: <http://advocacyforum.org/downloads/pdf/publications/criminalize-torture-june26-report-english-final.pdf>

Under pressure from national and international human rights organizations, the Government took a number of positive steps to reform Nepal's criminal justice system and improve its legislation relating to torture.

In January 2011, the Government put a draft Penal Code<sup>29</sup> before the Legislative Committee of Parliament, which finally provided for the criminalization of torture. Compared to the CRT Act, the provisions in the draft were regarded as a marked improvement. They included positive steps such as the inclusion of a definition of torture that was by and large in line with Article 1 of CAT, as well as increased accountability for perpetrators, such as a prohibition of the use of a "superior orders" defense.<sup>30</sup> Although it was criticized for imposing a maximum of just five years' imprisonment or a fine of up to NRs 500,000 (US \$7000), it was widely regarded as an important step forward in the process towards meeting international standards and providing the victims of torture with adequate protection and effective remedy.<sup>31</sup>

Another positive step towards protecting victims of torture was the Anti-Torture Bill, which was drafted by the Ministry of Justice and presented to Parliament in April 2012. The Bill also criminalized the practice of torture, and provided a list of acts that

<sup>29</sup> Advocacy Forum and REDRESS recommended some changes in the draft code. For more details please visit: [http://www.redress.org/downloads/publications/AFRedress\\_Report\\_on\\_Draft\\_Legislation.pdf](http://www.redress.org/downloads/publications/AFRedress_Report_on_Draft_Legislation.pdf)

<sup>30</sup> For a detailed analysis of Draft Penal Code (2011) (and the subsequent Torture Bill (2012)) please see p. 51-55 of "Torture of Women: Nepal's Duplicity Continues published by Advocacy Forum. Link is available at: [http://advocacyforum.org/\\_downloads/torture-of-women-report-june-26-2012-english.pdf](http://advocacyforum.org/_downloads/torture-of-women-report-june-26-2012-english.pdf)

<sup>31</sup> For an analysis of the Draft Penal Code, see the following report by AF and Redress 'Held to Account' December 2011. Available at: <http://www.advocacyforum.org/news/2011/04/af-redress-submit-key-recommendations.php>

would amount to torture under the new bill.<sup>32</sup> It also provided a rebuttable presumption that bruises, wounds and scars visible on a person in detention were caused by torture; placed a positive duty on officers in charge to prevent torture and ill-treatment; and set out a new system for complaints, investigation and prosecution.<sup>33</sup> That said, the Anti-Torture Bill was not without criticism, for example concerns were again raised over the 35-day statutory limitation for filing cases, the lack of provisions prohibiting amnesty for perpetrators, the inclusion of protection for perpetrators “acting in good faith”, punishment for victims deemed to be filing false complaints, insufficient penalties for perpetrators and inadequate medical treatment and reparation for torture survivors.<sup>34</sup>

Unfortunately, neither the Draft Penal Code nor the Anti-Torture Bill were ever passed by Parliament. All progress towards enacting these new pieces of legislation to protect the victims of torture and punish the perpetrators was halted with the dissolution of the Constituent Assembly and Legislative Parliament on 27 May 2012. As a result, the CRT Act remains the only piece of enacted torture legislation, with little prospect of any new laws coming into force that would be capable of challenging the use of torture and the culture of impunity that continues in Nepal any time in the near future.

<sup>32</sup> Section 4 of the Torture Bill (2012).

<sup>33</sup> Section 6, 7 and 14-20 of the Torture Bill (2012)

<sup>34</sup> For an analysis Torture Bill (2012) please see p. 51-55 of “Torture of Women: Nepal’s Duplicity Continues published by Advocacy Forum. Link is available at: [http://advocacyforum.org/\\_downloads/torture-of-women-report-june-26-2012-english.pdf](http://advocacyforum.org/_downloads/torture-of-women-report-june-26-2012-english.pdf)

## 2. THE JUDICIARY AND CRIMINALIZATION OF TORTURE

In December 2007, the Supreme Court of Nepal issued a directive order to the Government of Nepal to criminalize torture and provide appropriate redress to torture survivors. In its landmark judgment, the court affirmed that Nepal has an international obligation to pass a law criminalizing torture in accordance with Articles 2 and 4 of the United Nations Convention against Torture (CAT) and ordered the Nepal Government to “criminalize torture and make provisions to punish the perpetrators of torture as demanded by the petitioners.”<sup>35</sup>

Sadly, although the subsequent Draft Penal Code and the Anti-Torture Bill were seen (at least in part) as a response to this strong judgments by the Court, no further progress has since been made to bring Nepal into line with its obligations under international law.

## 3. NHRIS AND (I)NGO ADVOCACY FOR THE CRIMINALIZATION OF TORTURE

In response to Nepal’s lack of adequate torture legislation, many National Human Rights Institutions (NHRIs) including the National Human Rights Commission (NHRC), the National Dalit Commission and the National Women’s Commission of

<sup>35</sup> Ghimire & Dahal v. Nepal. Supreme Court Judgment, 17 December 2007. For the excerpt of the Supreme Court’s verdict on the criminalization of torture, see Advocacy Forum, “Criminalize Torture”, June 2009, page 79, Appendix B, available at: <http://advocacyforum.org/downloads/pdf/publications/criminalize-torture-june26-report-english-final.pdf>

Nepal have engaged in advocacy work to address this issue and encourage the Nepal Government to enact torture legislation.<sup>36</sup>

Similarly, numerous global and regional human rights organizations such as Human Rights Watch,<sup>37</sup> Amnesty International,<sup>38</sup> World Organization against Torture, REDRESS and Asian Human Rights Commission have regularly urged Nepal to criminalize torture in line with international standards. Likewise, Advocacy Forum has sent torture cases to international human rights NGOs and the UN calling for their urgent intervention. On a national level many Nepali human rights NGOs have lobbied extensively for the criminalization of torture for more than three decades. AF, for example, organizes meetings with stakeholders of the criminal justice system including Judges, Public Prosecutors, Defence Lawyers, Forest Guards and Police Authorities every six months to discuss the on-going use of torture and ill-treatment against detainees and the need for adequate legislation to combat it.

Despite the continuing efforts of both NHRIs and NGOs, the data provided in this report shows that the systematic use of torture and cruel, inhuman or degrading treatment of detainees in police detention continues with shocking regularity. It is the responsibility of the Nepal Government to prevent the use of torture and it has a duty to take the necessary steps to enforce this in law. Until this is achieved, NHRIs and NGOs can only continue to highlight and monitor the on-going situation and provide assistance to victims.

<sup>36</sup> See NHRC website available at: [http://nhrcnepal.org/nhrc\\_activities\\_details-9.html](http://nhrcnepal.org/nhrc_activities_details-9.html)

<sup>37</sup> Advocacy Forum together with HRW have made repeated calls for the criminalization of torture, available at: <http://www.hrw.org/en/reports/2008/09/11/waiting-justice-0>

<sup>38</sup> Amnesty International, "Nepal. Make Torture a Crime", March 2001, AI Index ASA 31/002/2001, available at: <http://www.amnesty.org/en/library/info/ASA31/002/2001/en>

#### 4. INTERNATIONAL RECOMMENDATIONS FOR THE CRIMINALIZATION OF TORTURE

The United Nations Committee Against Torture (the Committee) has been calling for Nepal to criminalize torture since 1993, when it first examined Nepal's initial report under CAT.<sup>39</sup> At the time, the Government of Nepal recognized its duty to ensure that "all acts of torture are to be made punishable by appropriate law" and pledged to take the necessary steps to conform to its obligations under the Convention.<sup>40</sup> Then in 1996, the United Nations Working Group on Arbitrary Detention visited Nepal and made several recommendations which included the adoption of domestic legislative measures to incorporate the provisions of the CAT into national law so that persons who engage in torture can be prosecuted and appropriate penalties imposed on those found guilty.<sup>41</sup>

As the human rights situation in Nepal deteriorated as a result of the decade long armed conflict that ravaged the country from 1996 to 2006, several other international human rights bodies visited Nepal to assess the human rights situation and the situation relating to torture specifically.

In 2000 the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Ms. Asma Jahangir, visited Nepal and recommended to the Nepal Government that Nepali law be amended or reformed in order to ensure that every citizen has

<sup>39</sup>The report is available at: <http://www.refworld.org/publisher,CAT,,NPL,3ae6ae3b10,0.html>

<sup>40</sup> The report is available at: [http://nepal.ohchr.org/en/resources/Documents/English/other/Support\\_Of\\_Victims\\_Of\\_Torture/7.pdf](http://nepal.ohchr.org/en/resources/Documents/English/other/Support_Of_Victims_Of_Torture/7.pdf)

<sup>41</sup>United Nations Working Group on Arbitrary Detention Report (1996) available at: <http://www.unhchr.ch/huridocda/huridoca.nsf/2f80d5ef4fbd3b49c1256b26003d73ba/21a5c0bf8cbe2b86802566520033effc?OpenDocument>

full and unhindered access to justice, while the Government must also take prompt and effective action to curb the emerging trend of human rights violations.<sup>42</sup> Then in 2004, the United Nations Working Group on Enforced or Involuntary Disappearance also recommended that the Nepal Government take steps to protect people's human rights by amending its criminal laws.<sup>43</sup> This was echoed in 2005 by the Special Rapporteur on Torture, Mr. Manfred Nowak, who found that torture was being systematically practiced in Nepal and recommended that the crime of torture be defined as a matter of priority in accordance with article 1 of the CAT.<sup>44</sup> In response to these comments the Government has accepted that "these allegations sometimes bear some truth."<sup>45</sup> Finally, in January 2011, the Nepal Government responded to the Universal Periodic Review (UPR) of the United Nations Human Rights Council<sup>46</sup>, expressing its commitment to enacting and implementing new laws criminalizing the use of torture; however this goal has yet to be achieved.

In October 2012, the United Nations Committee Against Torture (the Committee) published its report after a 6-year-long confidential inquiry into allegations of widespread torture

<sup>42</sup> The report is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/147/09/PDF/G0014709.pdf?OpenElement>

<sup>43</sup> The report of Working Group on Enforced or Involuntary Disappearance is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/105/23/PDF/G0510523.pdf?OpenElement>

<sup>44</sup> The report is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/101/19/PDF/G0610119.pdf?OpenElement>

<sup>45</sup> State report, p. 27, para. 134 available at: <http://www.hrtmcc.org/report.php?type=1&subtype=6>

<sup>46</sup> During the UPR session on Nepal some countries like Switzerland, UK, Denmark etc recommended Nepal to criminalize torture. The member states made 127 recommendations to Nepal among which 55 were accepted by Nepal to examine immediately, 28 were said to have been already implemented or in progress, 36 recommendations were listed as "may consider" and 7 recommendations were rejected by Nepal. The report is available at: [http://www.ncf.org.np/upload/files/417\\_en\\_Action\\_plan\\_UPR.pdf](http://www.ncf.org.np/upload/files/417_en_Action_plan_UPR.pdf)

and concluded that torture is still being systematically practiced in Nepal. It recommended that Nepal should “adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention.”<sup>47</sup>

After two decades of recommendations by numerous international human rights authorities, the Nepal Government has made some welcome attempts to legislate, but has so far failed to do what is necessary to comply with international law. Moreover recent actions by the Government have been heavily criticized for serving to aggravate the situation and worsen the issue of impunity, by failing to adequately examine cases of alleged torture and by refusing to bring perpetrators of torture to justice.

One recent and high-profile example of how the Nepal Government has actively sought to hinder, rather than assist the prosecution of an alleged perpetrator of torture can be observed in the on-going case of serving Nepal Army Colonel Kumar Lama, who was arrested in the United Kingdom (UK) in January 2013. He was arrested by British police under universal jurisdiction powers provided under the CAT and Section 134 (1) of the UK Criminal Justice Act (1988), on charges of torture alleged to have taken place in Goringhe Army Barracks in Kapilvastu district, during the armed conflict. Reacting to his arrest, the then Deputy

<sup>47</sup> Report on Nepal under article 20 of the Convention adopted by the committee at its forty-sixth session (9 May – 3 June 2011), recommendation no. b, available at: <http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf>

Prime Minister and Minister of Foreign Affairs said, “We strongly object to the arrest” denouncing it as a breach of international law and of the jurisdiction of a sovereign nation.<sup>48</sup> Likewise, the political leaders of the main political parties termed the arrest as an act of intervention against the sovereignty of Nepal. At first Government officials appealed to the United Nations to secure the release of Colonel Lama, as he was serving in the UN Peacekeeping Mission in South Sudan at the time of his arrest.<sup>49</sup> However, after the UN waived any possible immunity he may have had in his capacity as a peacekeeper, the Nepal Government approached the UK government through its embassy in Kathmandu to release and hand him over so he could return to Nepal. When the UK government replied that the Government cannot intervene in the jurisdiction of the Court, the Nepal Government appointed a top ranking law firm to defend Colonel Lama, releasing more than £400,000.00 pounds sterling (approximately NRs.58,000,000) to hire a defense team. This will be funded by Nepali tax payers, including those who have been victims of torture themselves.<sup>50</sup>

<sup>48</sup> This media report is available at: [http://myrepublica.com/portal/index.php?action=news\\_details&news\\_id=47698](http://myrepublica.com/portal/index.php?action=news_details&news_id=47698)

<sup>49</sup> This media report is available at: <http://www.ekantipur.com/2013/01/08/top-story/hand-over-colonel-to-ny-or-uk-missions-nepal-to-tell-un-dept/365277.html>

<sup>50</sup> This media report is available at: <http://www.nepalnews.com/archive/2013/jan/jan23/news20.php>

# SAFEGUARDING THE RIGHTS OF DETAINEES

The rights of detainees are enshrined in the Interim Constitution (IC) of Nepal (2007)<sup>51</sup> as well as by a number of domestic laws such as the Compensation Relating to Torture Act 2053 (1996) (CRT),<sup>52</sup> Children's Act-2048 (1992)<sup>53</sup> and the Juvenile Justice Procedural Rules-2063 (2006).<sup>54</sup> Despite this, a significant number of detainees in Nepal continue to be systematically, routinely and deliberately deprived of their rights from the point they are arrested to the moment they are either released or sent to prison. During this period – i.e. when held in police custody for interrogation following their arrest - detainees are routinely tortured by state authorities, in order to extract information, secure a confession, or even for purely punitive purposes.

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<sup>51</sup> Interim Constitution of Nepal 2063 (2007) Hereafter "IC". Article 24 (1-10) and Article 26 can be accessed here (page 13-14): <http://www.lawcommission.gov.np/en/documents/prevaling-laws/constitution/func-startdown/163/>

<sup>52</sup> Compensation Relating to Torture Act 2053 (1996), available at: <http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-acts/Prevailing-Laws/Statutes---Acts/English/orderby,2/page,3/>

<sup>53</sup> Children's Act 2048 (1992), available at:<http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-acts/Prevailing-Laws/Statutes---Acts/English/orderby,2/page,3/>

<sup>54</sup> Juvenile Justice Procedural Rules 2063 (2006), available at:<http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-rules/Prevailing-Laws/Rules-and-Regulations/English/orderby,2/page,4/>

In comments and observations submitted by Nepal to the United Nations Committee Against Torture (the Committee) on 8 August 2011, the Government claimed, “Nepal neither condones torture nor does it have a State policy to let perpetrators go with impunity”.<sup>55</sup> While it may be true that the Government does not openly advocate the use of torture, the lacunas and loopholes in the laws that govern the treatment of detainees and the lack of adequate safeguards and robust policies to combat the use of torture, mean that the state is failing to protect the victims and punish perpetrators, allowing the mistreatment of detainees to occur with impunity.

According to the findings of AF, detainees are routinely detained in police custody arbitrarily for more than the legal limit of 24 hours, without their names formally being registered in the detainees’ register and without being informed of their rights, or the reason for their arrest. According to AF data, 609 out of 3,773 detainees interviewed (16.1%) claimed that they were not given any reason for their arrest and 2,795 (74.1%) detainees claimed that they were given the reason for arrest only at the time they were given a detention letter.<sup>56</sup>

Detainees are also regularly refused access to lawyers, family members and human rights defenders. During 2012, AF found that 714 (18.9%) detainees claimed that they were not allowed access to their family members. According to victims, the first 24 hours after arrest are when the police are most likely to use torture in order to obtain information or a confession. On occasion, police also deny detainees access to food. (AF found

<sup>55</sup> Annex XIII, Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party, page 12, available at: <http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf>

<sup>56</sup> See annex A for detailed data.

that 96 (2.5%) detainees claimed that they were not provided any food to eat before their remand).

Only after completing their interrogations will the police then proceed with legal formalities, such as providing an arrest warrant and detention letter, completing the detainees' register, arranging a medical check-up and submitting a remand application to the court. Typically detainees are not offered legal assistance until after they have been formally remanded by the court. Alternatively, the detainee may simply be released without charge.

According to the OAG report, published in February 2013, there is a general principle that governs the rights to fair trial, that all detainees shall be informed about their pre-trial rights, such as the right to remain silent, the right to legal representation, the right to free legal aid and the right against self-incrimination before their statement is taken. Despite this, the OAG found that although “the Chief Police Officer of the respective police offices claimed that they informed all the detainees of all their pre-trial rights...information from the detainees tells differently”. It found that in eight of the detention centers it visited, none of the detainees had been informed of all their rights, while in seven others, less than 33% were informed of their right to legal representation. In Makwanpur, Gorkha and Kalimati detention centers less than 12% of the detainees were informed of their right to silence.”<sup>57</sup>

<sup>57</sup> OAG Report, February 2013, p. 69. Available at: <http://attorneygeneral.gov.np/document/Bulletin/Bulletin10/final%20Buletine%2010.pdf>

## 1. DETAINEES' RIGHTS TO BE INFORMED OF CHARGES

Article 24 (1) of the IC provides that “No person who is arrested shall be detained in custody without being informed of the ground for such arrest”. Rule 9 (1) and (3) of the State Case Rules-2055 (1999) provide that those arrested and detained should be provided with an arrest warrant and detention letter with details of the alleged crimes as specified in annex-11 and 12.<sup>58</sup>

In reality however, most arrestees come to know about the charges against them during police interrogation and very few detainees are provided with an arrest warrant at the time of arrest or detention letter within 24 hours of arrest. According to the OAG Report, in each detention center between 5% and 45% of detainees did not know about the recording of the time, place and reason for their arrest. They also indicated that they did not know what paperwork they signed.<sup>59</sup>

The following ordeal experienced by a 30-year-old man from Rupandehi district named Ram Bahadur Chai shows how the right to be informed of charges can be blatantly disregarded by the state authorities:

*“In total, police arrested me three times for not accepting a girl as my sister-in-law in the absence of my brother who had gone to work abroad. The first time, I was arrested at around 10 am on 14 April 2013 and released at around 5*

<sup>58</sup> State Cases Rules-2055 (1999) available at: <http://www.lawcommission.gov.np/en/prevaling-laws/func-startdown/959/>

<sup>59</sup> OAG Report, February 2013, Chapter 12, p.69 (p. 9 of English section), available at:<http://attorneygeneral.gov.np/document/Bulletin/Bulletin10/final%20Buletine%2010.pdf>

*pm the same day. The second time was at around 10 am on 15 April 2013 and I was released at around 5 pm the same day. On neither occasion was I provided with an arrest warrant or a detention letter.*

*On 16 April 2013 I filed a writ before the District Court in Rupandehi against the police action. The Court gave a hearing date for the following day. However, later that day 12 policemen under the command of Inspector Ambika Prasad Gupta arrived in my house with the girl and her family members and gathered villagers near my house. When I showed them the writ registration slip and requested the case be decided by the court, the Inspector said, “We don’t know the court.” He ordered his subordinates to break down the door of my house, which they did and then brought the girl into my house. When we protested against the police action, the police manhandled and beat my wife. At the same time, some policemen arrested me using force and beat me. The following day, I found out that the court had issued an interim order not to arrest or detain me. However, the court order was not followed. I was detained illegally until 20 April 2013, during which time police did not provide me with an arrest warrant or detention letter. Nor did I receive a medical check-up and police did not give me any food to eat. My wife brought food for me.*

Mr. Chai was released without charge on 20 April 2013.

It is mandatory under Number 121 of the Court Management Chapter of the *Muluki Ain* (National Code) 2020 that a person shall not be held in detention unless and until a warrant for detention, accompanied by the reasons for holding him/her and

the section or number of the law under which the person is to be held in detention is given to the person.

Moreover, it is to be noted that Section 21 of the State Cases Act-2049<sup>60</sup> and Rule 11 (1) of the State Cases Rules- 2055 (1999)<sup>61</sup> provide that, where appropriate, police can release a detainee pending further investigation, however this provision is rarely used. When used, it concerns mainly cases involving children. The large majority of people arrested in Nepal spent excessive amounts of time in police custody and pre-trial detention, while bail is rarely used in contravention of established international best practice and jurisprudence.<sup>62</sup>

## 2. ACCESS TO LEGAL ASSISTANCE

Article 24 (2) of the IC provides that any person who is arrested “shall have the right to consult a legal practitioner of his/her choice at the time of the arrest.” In reality, however, evidence gathered by AF found that suspects are normally only given access to a lawyer after they have been detained at the police station for

<sup>60</sup> Section 21 of State Cases Act-2049 (1992) provides, “If any person kept in the custody for investigation under this Act is deemed not necessary to be kept any more in custody, the Police personnel may release such person on guarantee of attendance (*Hajeer Jamani*) by taking the approval of the Government Attorney as prescribed, or depending on the situation, by preparing a note with reasonable grounds even without the approval of Government Attorney.” Available at: [http://www.ncf.org.np/upload/files/209\\_en\\_government\\_cases\\_act\\_2049\\_ENG.pdf](http://www.ncf.org.np/upload/files/209_en_government_cases_act_2049_ENG.pdf)

<sup>61</sup> Rule 11 (1) of State cases Rules-2055 provides, “Where a person is held in the police custody in the course of investigation pursuant to Section 21 of the Act and it seems that it is not necessary to keep the person in police custody, the police officer shall take the decision to release such person in guarantee of attendance mentioning the grounds thereof, and forward the case to the Government Attorney’s office for the latter’s consent to release the person on guarantee of attendance.”

<sup>62</sup> Advocacy Forum, “The Right to Fair Trial in Nepal: A Critical Study”, 2012, pages 5-10.

interrogation and often only at the time they are presented to the Court and formally remanded pending further investigation, leaving no time for their lawyers to familiarize themselves with the evidence or other elements of the case against their clients.

The preamble of the Legal Aid Act – 2054 (1997) states that, “it is expedient to make legal provisions regarding legal aid for those persons who are unable to protect their legal rights due to financial and social reasons to provide for equal justice to all according to the Principle of Rule of Law”.<sup>63</sup> However, legal aid lawyers generally do not make visits to detention centers where the right to legal access of the detainees is often violated.

AF is one of the NGOs trying to provide legal assistance to detainees at the time they are in police custody. However, they are regularly denied access, especially during the first few hours and days of someone’s detention. In September 2012, for example, AF lawyers tried to visit a detainee being held at the District Police Office (DPO) in Kaski, where it was reported that he had been severely tortured by police. After keeping the AF lawyer waiting for three hours they were told “you can’t meet him today, or tomorrow. You can come on Sunday.” They were then told: “We have come to know that he has reported being tortured to human rights organizations. Now, he will pay for it.”<sup>64</sup>

This example demonstrates how easy it is for police officers to ignore a detainee’s right to have access to a lawyer. Furthermore, it demonstrates how the withdrawal of this right can be used as

<sup>63</sup> Legal Aid Act – 2054 (1997), available at <http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-acts/Prevaling-Laws/Statutes---Acts/English/orderby,2/page,7>

<sup>64</sup> For detailed information of the case please visit: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-173-2012/?searchterm=khimlal>

punishment for reporting serious human rights abuses and how the police feel able to do so with complete impunity.

### 3. THE RIGHT TO BE PRODUCED BEFORE A COURT

Article 24 (3) of the IC provides that “Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such a person shall be detained in custody beyond the said period except on the order of such authority.” Section 15 of the State Cases Act, 2049 (1992) also provides that, “No person shall be detained for more than twenty four hours for investigation purpose unless otherwise provided in this Section.”<sup>65</sup>

AF has found that detainees are often held for far longer than 24 hours before being produced before a Court or other competent authority. AF data shows that during 2012, 1,450 (43.7%) of detainees claimed that they were not taken to the court within 24 hours of their arrest.<sup>66</sup>

The following statement provided by a 45-year-old woman from the Dalit community named Devi is an example of how this works in practice:

*“After police contacted me I presented myself at the Area Police Office (APO) in Khajura, Banke district at around 10 am on 19 February 2013. There I came to know that a girl*

<sup>65</sup> State Cases Act 2049 (1992), available at [http://www.ncf.org.np/upload/files/209\\_en\\_government\\_cases\\_act\\_2049\\_ENG.pdf](http://www.ncf.org.np/upload/files/209_en_government_cases_act_2049_ENG.pdf)

<sup>66</sup> For detailed data please see Annex 1, Table 9 .

*from my village had filed a human trafficking case against me. Her elder sister had been sent to a Gulf country by my husband the previous year. I heard that she was doing well and she was sending money back home to her family. My husband had since deserted me and I didn't know anything about how he sent her to the overseas job. I am illiterate and work as a laborer. I don't know anything about this business. Nevertheless police arrested me and kept me in illegal detention for 15 days. I was finally produced before the court and remanded for five days on 5 March 2013. Although the police did not torture me, my situation was very bad. Eventually lawyers from Advocacy Forum came and brought me some clean clothes and provided me with some sanitary pads.”*

On 31 May 2013, Devi was sent to prison to await trial on the order of the Banke District Court. AF is providing her legal support.

Investigations carried out by AF found that detainees' records are often falsified to show that a person had been arrested more recently than they actually have been, in order to meet the 24 hour criteria for presentation before a Court. This is contrary to Principle 12 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (1988), which states that a proper record of the detainee's detention must be maintained.<sup>67</sup> After visiting Nepal in 2005, at the time of the armed conflict, the UN Special Rapporteur on Torture, Manfred Nowak confirmed that detainees' registers were poorly maintained and made the recommendation that the Nepal

<sup>67</sup> See <http://www.un.org/documents/ga/res/43/a43r173.htm>

Government maintain detainees' registers in a proper manner.<sup>68</sup> Despite an end to the conflict more than six years ago, AF has found that the practice of falsifying detainees' records is still widespread across Nepal.

#### 4. PROHIBITION ON THE USE OF TORTURE

Article 26 (1) of the IC provides that, "No person who is detained during investigation, or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment." Under domestic law, Section 3 (1) of the CRT Act also states that "[n]o person who is in detention in the course of inquiry, investigation or hearing, or for any other reason, shall be tortured."<sup>69</sup>

Despite these safeguards, evidence gathered by AF and the UN Committee Against Torture shows that this right is systematically, habitually and deliberately violated by the police and state authorities throughout Nepal. For example, when visited by lawyers from AF, Santaram Gupta, 47, a sweet maker by profession, provided an account of how he was detained illegally and tortured by officers at Bethari Police Station, Rupandehi district after being arrested on the 5 October 2012 on suspicion of stealing:

<sup>68</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, MISSION TO NEPAL, p. 9. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/101/19/PDF/G0610119.pdf?OpenElement>

<sup>69</sup> Section 3(1) CRT Act (1996). Available at: <http://www.lawcommission.gov.np/en/documents/func-startdown/423/>

*“I was returning home with an Indian national whom I had known for a few months. On the way, he complained that his antique gold and silver coins had been stolen. When he accused me of stealing them I suggested we go*



*to police station to settle the matter. We went to Bethari Police Station but police also suspected me and detained me there illegally for three days. At around 6 pm on the day of my arrest six or seven unidentified policemen in civilian clothes blindfolded me and took me to a room where they handcuffed me and interrogated me about the case. I pleaded my innocence but they forced me to lie down on the floor and beat me with a stick on the soles of my feet, thighs and arms about 70/80 times, for about one hour. At around 11pm the same night I was taken to another room and tortured again this time by beating me with a belt on my back and by kicking me with boots on my hips and other body parts for half an hour. On that day, they didn't give me any food to eat.*

*On the second day (6 October 2012) in the afternoon, 5 or 6 unidentified policemen took me to a room and handcuffed my hands together. They blindfolded me and forced me to lie down on my back. Then some of them held my legs while others beat me with plastic pipes on the soles of my feet about 50/60 times and stamped on my thighs. After that I fell unconscious and so I don't know how much longer*

*they tortured me. When I came round I was laying in the detention cell. On the same day, at 5 pm, I was taken to Bhim Hospital for a health check-up but fearing police reprisals I couldn't tell the doctor about the torture that had been inflicted on me."*

According to the findings of AF, juveniles<sup>70</sup> are in fact more likely than adults to be subjected to torture or ill-treatment while in police custody.<sup>71</sup> This is despite the existence of both the Children's Act 2048 (1992), Section 7 of which states that "no Child shall be subjected to torture or cruel treatment" and the Juvenile Justice Procedural Rules, 2063 (2006) which intend to protect the rights of young people held in police detention and introduces several safeguards.<sup>72</sup>

The Child Labour (Prohibition and Regulation) Act 2056 (2000) has safeguarded the rights of the child against forced labour. Chapter 2 Section 3 of the Act provides, "No child shall be engaged in works as a labourer against his/her will by way of persuasion, misrepresentation or by subjecting him/her to any influence or fear or threat or coercion or by any other means." Furthermore Chapter 2, Section 3 (1) of the Act provides, "No

<sup>70</sup> In this report, the term "juvenile" refers to children aged 10 to 17 inclusive. The definition of "child" under Section 2 (a) of the Children's Act 2048 (1992) is "a minor not having completed the age of sixteen years".

<sup>71</sup> AF figures show that 34.7% of juveniles visited by AF in 2012 reported being subjected to torture or ill-treatment. This compared to 22.3% of general population as a whole. For more information see Chapter 1 of this report.

<sup>72</sup> Rule 5 (1) of the Juvenile Justice Procedural Rules, 2063 (2006) states that "The investigation and inquiry authority shall arrange for a child friendly environment so as to enable the child to answer the matters asked to him/her". Rule 5 (2) states that inquiries "may be done in the presence of the father, mother, guardian, lawyer or the representative of a child welfare home or orphanage". Rule 5 (4) states that "A child shall not be inquired for a period longer than an hour at once and shall not be inquired at night".

child having not attained the age of 14 years shall be engaged in works as a labourer.”

The following shocking example provided by a 12-year-old boy (name withheld) shows the extent of police brutality used against juveniles, the arbitrary nature of detentions and also gives testimony to the use of forced labour against child detainees held in custody.

*“At around 7.30 pm on 18 March 2013, I went to the Area Police Office, Kapan, Kathmandu with my mum to meet my father with some food. My father was detained there by police after being charged with helping my elder brother to escape arrest following a gang fight involving local boys. When I was there the Police took me and detained me. Then they released my father saying, “Until you bring your elder son to the police station, your younger son will be in our custody.” When my mother tried to give me food that was brought for my father, one unidentified police said, “Don’t give him food. He won’t eat today.” I was not given any food to eat that night.*

*Immediately after my parents left the police station, one policeman forced me to bend down and put my head in between his legs. He rolled up my shirt and punched me on my back with his fist 3 or 4 times, asking me questions about my elder brother. He forced me to stand on all fours and rubbed the sole of his boot on my back until it was very painful. He said, “Let me see how strong you are.” He stepped on my back and I fell flat on the floor. The following day an unidentified policeman beat me with a stick 2 or 3 times on the palms of my hands and 2 or 3 times on my legs.*

*He said it was punishment for not cleaning the drainage system and the police office premises properly.*

*On 20 March 2013 I was transferred to Boudha police station, Kathmandu where I was threatened with electric shocks and told that I would be sent to jail until I grow a moustache and it turns grey. In total I was detained for 5 days, tortured physically and mentally, and forced to clean the drains and garbage in the police station before finally being released on 23 March without charge.”<sup>73</sup>*

## **5. PRESUMPTION OF INNOCENCE AND THE RIGHT NOT TO BE COMPELLED TO BE A WITNESS AGAINST ONESELF**

Article 24 (5) of the IC provides that “Every person charged with an Offense shall be presumed innocent until proved guilty of the offense.” Furthermore, Article 24 (7) provides that “No person accused of any offence shall be compelled to be a witness against oneself”. However; evidence gathered by AF shows that not only are detainees routinely presumed to be guilty from the moment they are arrested, but they are also tortured in order to extract confessions needed to secure a conviction.

In one account given to AF lawyers, a 23-year-old man called Prasai from Jhapa district reported the following experience at the hands of the police in April 2012:

*“I was arrested on suspicion of stealing a motorcycle from my neighbor who is a Police Inspector. On the first*

<sup>73</sup> AF interview with the victim and his parents at AF office, 25 March 2013.

*night, three policemen tortured me for about two hours, beating the soles of my feet, back and bottom. I pleaded my innocence and tried to ask them to justify why one neighbor would steal from another who is a Police Inspector, but they didn't listen to me.*

*On the second night, Police Inspector Chhabiraman Bhattarai ordered his subordinates to torture me until I confessed. Then the same three policemen including Constable Khamba Singh Baniya tortured me for about half an hour by beating on the soles of my feet, back and bottom again. It was very painful because they tortured me by beating on the same parts of my body where they had the day before. To save myself from further torture I accepted the allegation and told them a false story about how I stole the motorcycle. Due to fear I also signed the paperwork.<sup>74</sup>*

Constable Baniya was reportedly involved in the torture of another detainee Binod B.K. in February 2011 in Jhapa district. With the legal support of AF, torture survivor B. K. filed a torture case against him on 28 February 2011. On 15 April 2012, the Jhapa District Court awarded him NRs. 15,000/-compensation; however no departmental action was ordered against him.

Although there is no specific article under the IC to prohibit the filing of false charges against a person, this principle is enshrined in the overarching principles of the rule of law. AF research found that detainees regularly reported that after failing to extract a confession during interrogation, the police had filed new fabricated charges against them. Most commonly, police will charge detainees with a crime that is adjudicated by a CDO

<sup>74</sup> Interview with AF lawyer, June 2012.

and are therefore not subject to the scrutiny of a Court, for the reasons discussed below. During informal discussions with AF, police officers have openly admitted that they have filed fake cases on some occasions.

Torture survivor C.B. was arrested in June 2012 on the charge of preparing forged documents. A draftsman by profession he explained to AF lawyers how he was tortured and threatened with false charges by police while in custody at the Metropolitan Police Sector at Kamalpokhari, Kathmandu:

*“After already being tortured for one hour, two policemen caught my legs by my knees and one of them beat on the soles of my feet with a bamboo stick while an unidentified policeman verbally abused me and threatened to file a fake case against me. They punched me with their fists, slapped me and kicked me with their boots about a hundred times. My little toe of my right foot was bleeding. That day they tortured me for about two hours intermittently asking me about the forged documents. There were blue marks of torture on the soles of my feet, hips and back. Due to hard slapping on my ears I could not hear from my right ear for a few days.*

*During my interrogation, one Police Inspector said to me, “I can finish you. I will not let you escape from this case.” Another policeman came in and said, “He is a good and honest man. Tomorrow, he will tell the Court that his wounds were caused by falling down a staircase.” Then they photographed me with drugs that they brought to my cell. The following day, a policeman from the Central Bureau of Investigation visited where I was detained. He was one of*

*the officers who had tortured me the previous day. He said to me, “Tell us the truth or we will file a drug case against you and torture you again.”*

C.B. was released from police custody on 20 August 2012 after depositing NRs. 9,000 bail money. On 21 August 2012, he filed a case under the CRT Act before the District Court, Kathmandu with the legal support of AF. The case is still under consideration.

This example demonstrates how detainees can be forced to admit to crimes they have not committed in order to avoid suffering further punishment. Failures by the Court to adequately scrutinize evidence gathered through torture has undoubtedly helps to foster a culture in which the right to be presumed innocent and the right against self-incrimination are both regularly disregarded by state authorities, at the expense of the victim and the rule of law. AF data analysis shows that 2,704 detainees (81.5%) claimed that the judge did not ask them about police treatment in detention when they were produced in court.

## 6. PROHIBITION ON “DOUBLE JEOPARDY”

Article 24 (6) of the IC provides that “No person shall be prosecuted or punished for the same offence in a court of law more than once”. According to the findings of AF this is the only provision that has been strictly followed by the state agencies. This is likely to be because it could be easily scrutinized by the judiciary and challenged during legal proceedings.

## 7. THE RIGHT TO INFORMATION ON TRIAL PROCEEDINGS

Article 24 (8) of the IC provides that “Every person shall have the right to be informed about the proceedings of the trial conducted against him/her”. However, according to some detainees, they were forced to sign their statement which was not given to them to read or was not read out to them. Similarly, during court proceedings they are not provided with information about the progress in their case. Furthermore, the detainees must make their own arrangements for their file to be photocopied if they want to consult their records.

## 8. THE RIGHT TO BE TRIED BY A COMPETENT COURT

Article 24 (9) of the IC provides that “Every person shall be entitled to a fair trial by a competent court or judicial authority”. However, there are some crimes, for example some that fall under the Local Administration Act, 2028 (1971) the Some Public (Offences and Penalties) Act (1970), the Arms and Ammunition Act 2019 (1962) the Black Marketeering and Some Other Social Offences (and Punishment) Act 2032 (1975), the Essential Goods Protection Act 2012 (1955), the Explosives Act 2018 (1961) and the Public Security Act 2046 (1989), which are handled by Chief District Officers (CDOs), an executive authority with quasi-judicial powers. For example, Section 20 (1) of the Arms and Ammunition Act gives powers to CDOs to impose sentences of up to 7 years imprisonment.

According to AF experience, the police sometimes file, or rather divert cases under one of these Acts, so that they are tried before

CDOs and avoid the stricter rules of procedure before District Courts.

In an interview conducted by AF lawyers the following account was given by a 15-year-old detainee who was arrested by 8 or 9 unidentified policemen in police uniform at around 3am on 19 February 2013:

*“At around 3 am in the night 8 or 9 unidentified policemen broke the door of my house and arrested me. Once in the police van I was handcuffed and tortured by some unidentified policemen and beaten with bamboo sticks, kicked with boots and punched with fists. Only during police interrogation I came to know that I was arrested on suspicion of robbing people. In the end they charged me for a crime under the Arms and Ammunition Act”.*<sup>75</sup>

According to the OAG, in 2009 a total of 892 cases were filed under the State Cases Act 2049 (1992) before the Kathmandu District Court where six District Judges hear (only) criminal cases. In the same period of time the District Administration Office in Kathmandu where only one Government employee, the Chief District Officer (whose job in any event is mainly to manage the daily administrative functioning of the district) heard 1,098 cases. Nationwide figures for 2012 show a similar trend, with 8,851 criminal cases filed in the District Courts compared to 7,281 cases at District Administration Offices.<sup>76</sup>

<sup>75</sup> OMCT, “Nepal: Allegations of torture of a minor boy, A.D.F. (name withheld), in Banke district”, 21 March 2013, available at <http://www.omct.org/rights-of-the-child/urgent-interventions/nepal/2013/03/d22228/>

<sup>76</sup> Annual Report 2068/069 of OAG, p 61 available at: <http://www.attorneygeneral.gov.np/document/final%20report%202068-2069.pdf>. See also AF, “Torture of Women:

In an attempt to challenge the quasi-judicial power of CDOs, Advocacy Forum filed a Public Interest Litigation (PIL) petition in April 2010, arguing that these powers are contrary to the IC and international human rights law. In September 2011, after recognizing that the right to a fair trial was a fundamental and non-derogable right, the Supreme Court of Nepal ruled that the provisions which grant quasi-judicial powers to CDOs breached Articles 24, 100 and 101 of the IC and issued a Directive Order ruling the provisions to be unconstitutional.<sup>77</sup> The Court ordered the Government to redefine which cases should be given to Executive Officers and which cases should be heard by courts or specialized tribunals. To do so, it required the Government to form a committee to review the extent of judicial powers exercised by Executive Officers, and to recommend necessary changes within six months of its formation. As an interim measure while reforms are carried out, the Court ordered that, within the next year, all CDOs must be shown to have a law degree or be given three months of legal training.<sup>78</sup>

The Supreme Court Order has brought a positive change in so far that the Government has started providing 3 months of trainings to CDOs. As a part of the training CDOs have been taken on observation visits to the courts in Nepal and other countries including India.

On 22 March 2012 the Council of Ministers decided to form a 10-member “Committee on the Study of Judicial Power of Administrative Officers” under the coordination of the Secretary

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Nepal’s Duplicity Continues” p. 21, available at: [http://www.advocacyforum.org/\\_downloads/torture-of-women-report-june-26-2012-english.pdf](http://www.advocacyforum.org/_downloads/torture-of-women-report-june-26-2012-english.pdf)

<sup>77</sup> <http://www.advocacyforum.org/news/2011/09/sc-issues-directives-to-review-quasi-judicial-power-of-cdo.php>

<sup>78</sup> Nepal Law Reporter, 2068, Volume 7, page 1083, decision no. 8642.

(Law) of the Office of Prime Minister and Council of Ministers. In the month of Poush 2069 (Dec 2012/January 2013), the Committee submitted a 73-page report to the Office of the Prime Minister and the Minister of Council. It found that 117 laws and 16 bylaws provided broad discretionary power of a judicial nature to CDOs without clear grounds and standards, which were open to abuse. The report concluded however, that the quasi-judicial power provided to the administrative body is a necessary evil which should be controlled and regulated by introducing reforms in laws, policies and institutions, and made 18 recommendations for legal, policy and institutional reforms.<sup>79</sup>

AF welcomed the Supreme Court Order and has been monitoring its implementation. It has also organized a consultation meeting with officials of the Office of Prime Minister and Council of Ministers, Ministry of Law, Justice, Constitutional Assembly and Parliamentary Affairs, CDOs, Judges, National Human Rights Commission, National Judicial Academy, Ministry of Forest, National Law Commission, Office of Attorney General, Nepal Bar Association, defense lawyers and Police in February 2013.

## 9. THE RIGHT TO LEGAL AID

Article 24 (10) of the IC provides that an “indigent person shall have the right to free legal aid in accordance with law”. However,

<sup>79</sup> The Nepal version of the report is available at: [http://www.opmcm.gov.np/uploads/resources/file/123\\_Quasi\\_20130222115342.pdf](http://www.opmcm.gov.np/uploads/resources/file/123_Quasi_20130222115342.pdf)

the Legal Aid Act – 2054 (1997)<sup>80</sup> and Legal Aid Rules 2055 (1998)<sup>81</sup> demand that those in need of legal aid must fulfill certain criteria and prove that they are unable to pay for legal representatives themselves. The criteria include being able to prove an annual income of less than NRs. 40,000 (approximately US\$450) through letters of recommendation from their home Municipality or Village Development Committee (VDC) which can be very difficult to obtain for a detainee whose family members and relatives are not in contact or live far away. Furthermore, District Legal Aid Committees hold discretionary powers to grant or reject legal aid applications. As a result, in practice the provision of free legal aid is rare. Very few needy people ever receive legal aid assistance. As a result, they must rely on the assistance of NGOs such as AF.

Rule 111 (a) of the Supreme Court Regulations<sup>82</sup>, Rule 105 (a) of Appellate Court Regulations<sup>83</sup> and Rule 95 (a) of District Court Regulations<sup>84</sup> also provide that each court will appoint a stipendiary lawyer for the purpose of providing free legal aid to indigent persons. However, these lawyers act only after they receive applications from the indigent person or on referral from the court. They also do not make visits to government detention centers and prisons where indigent people in need of legal aid are detained.

<sup>80</sup> The Legal Aid Act-2054 (1997) is available at: <http://www.lawcommission.gov.np/en/prevaling-laws/prevaling-acts/func-startdown/182/>

<sup>81</sup> The Legal Aid Rules-2055 are available at: [http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-byelaws/Prevaling-Laws/Rules-and-Regulations/English/Legal-Aid-Rules-2055-\(1998\)/](http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-byelaws/Prevaling-Laws/Rules-and-Regulations/English/Legal-Aid-Rules-2055-(1998)/)

<sup>82</sup> The Supreme Court Regulation - 2049 are available at: [http://www.supremecourt.gov.np/download/Supreme\\_Nimawali.pdf](http://www.supremecourt.gov.np/download/Supreme_Nimawali.pdf)

<sup>83</sup> The Appellate Court Regulation - 2048 is available at: [http://www.supremecourt.gov.np/download/Supreme\\_Nimawali.pdf](http://www.supremecourt.gov.np/download/Supreme_Nimawali.pdf)

<sup>84</sup> The District Court Regulations - 2052 are available at [http://www.supremecourt.gov.np/download/District\\_Nimawali.pdf](http://www.supremecourt.gov.np/download/District_Nimawali.pdf)

## 10. THE RIGHT TO A MEDICAL CHECK-UP WHILE IN DETENTION

Article 16 (2) of the IC under the heading of Right Relating to Environment and Health provides “Every citizen shall have the right to basic health services free of cost from the State, as provided in law.”<sup>85</sup> Likewise, Section 3 (2) of the CRT Act provides that “In detaining and releasing any person, the concerned official shall get such person examined physically by a medical practitioner engaged in the governmental service as far as possible and him/herself examine such person in cases where no such medical practitioner is available, and maintain records thereof.”<sup>86</sup>

In practice, AF finds that although most detainees are taken for a medical check-up at the time of detention, this does not happen immediately and when taken they are often seen by an unqualified practitioner. Among the 3,773 detainees interviewed by AF in 2012, 3,579 (94.9%) confirmed that they were provided with health check-ups whereas 194 (5.1%) of detainees claimed that they were not given a check-up. This figure is similar to that of the OAG, which found that “90% detainees had been taken medical examination”.

When medical check-ups were conducted, detainees reported that police officers were often present during them, citing security reasons. Fearing police reprisals detainees are often too afraid to tell doctors about the torture and ill-treatment they have suffered. Even when detainees are brave enough to speak out, doctors

<sup>85</sup> The Interim Constitution of Nepal – 2063 (2007) is available at: <http://www.lawcommission.gov.np/en/prevaling-laws/constitution/func-startdown/163/>

<sup>86</sup> The Compensation Relating to Torture-2053 is available at: <http://www.lawcommission.gov.np/en/documents/func-startdown/423/>

rarely prescribe adequate medicines to detainees and also fail to reflect the torture in detail in their medical reports.

The OAG report published in February 2013 also states that “the quality of medical check-ups looked to be problematic.”<sup>87</sup> It was reported that the doctors performing the medical check-ups simply filled out forms on the basis of the answer to the question, “Have you drunk alcohol?” “Do you have any wounds or injuries?”<sup>88</sup> Such practice is bound to have adverse implications in terms of diagnosing infliction or non-infliction of torture by the police. It also will have an impact on the courts’ decisions to admit or not admit evidence on grounds of ill-treatment.

The following account was reported to AF by 20-year-old Pasang from Solukhumbu district:

*To support my studies I work as a waiter at a Catering Service. At around 8.30 pm on 1 February 2013 I was returning to my rented room after finishing work. As I was walking on the road in Boudha a police van stopped. The officers accused me of drinking alcohol and planning to rob people. Then 3 or 4 unidentified policemen under the command of D. V. Danuwar verbally abused me while other policemen kicked me with police boots and beat me with sticks. One of them also punched me in the face, leaving my left eye swollen.*

<sup>87</sup> OAG report, February 2013, p. 70, available at: <http://attorneygeneral.gov.np/document/Bulletin/Bulletin10/final%20Buletine%2010.pdf>

<sup>88</sup> Please visit OAG report, February 2013, p. 70 available at: <http://attorneygeneral.gov.np/document/Bulletin/Bulletin10/final%20Buletine%2010.pdf>

*The same night I was taken to a hospital for a medical check-up. The health professional asked me if I had consumed alcohol. I said that I had not and complained to him about my swollen eye. I asked for some medicine but he said that the wound was minor and would heal itself. After that I didn't complain to him about of the pain I was feeling along my backbone. After 4 days in illegal detention I was remanded on 4 February 2013 on public offences charges.”*

Research carried out by AF also found that in some cases doctors had been pressurized and/or threatened by the police to change a medical reports that documented injuries that had been caused by torture. In one such case, a medical professional who wished to remain anonymous told AF lawyers that they had been threatened by police and pressurized by the CDO to change the medical report of a torture survivor, which had included reports of wounds caused by police torture at District Police Office, Dolakha in June 2010.

Although detainees' rights are safeguarded under the IC and domestic laws, the data and case studies collected by AF show that detainees' basic rights are systematically violated in government detention centers. The widespread practice of torture and ill-treatment with the aim of extracting confessions and/or information from detainees shows that police have the mentality that arrest and conviction rates represent the success of the police department, rather than seeing themselves as neutral actors upholding the law.



# INVESTIGATION, PROSECUTION AND REPARATION RELATING TO TORTURE

As discussed in Chapter 2, the existing legal system of Nepal fails to provide adequate avenues for torture survivors to seek justice and almost never holds perpetrators accountable for their crimes. The investigation of torture, if carried out at all, is at best piecemeal, conducted by national institutions or internal departmental units, which rarely result in any meaningful action. The CRT Act remains the only judicial remedy available to victims of torture, though it only allows for very limited civil penalties.

In 2007, the IC changed the status of the National Human Rights Commission (NHRC), to a constitutional body with powers to investigate human rights violations and recommend cases for prosecutions and/or compensations to the Government. The IC also imposed certain obligations on the OAG to monitor the human rights of detainees.<sup>89</sup>

<sup>89</sup> Article 135 (3) ( c) of IC imposes the following obligation on the Office of the Attorney General: “On a complaint alleging that any person held in custody has not been treated humanely subject to this Constitution or such person has not been allowed to meet his or her relative in person or through his or her legal practitioner, or on receipt of information of such matter, to inquire there into and give necessary directive to the concerned authority to prevent such act” Available at: [http://www.lawcommission.gov.np/en/prevaling-laws/constitution/Prevailing-Laws/Constitution/Interim-Constitution-of-Nepal-2063-\(2007\)/](http://www.lawcommission.gov.np/en/prevaling-laws/constitution/Prevailing-Laws/Constitution/Interim-Constitution-of-Nepal-2063-(2007)/)

The National Women's Commission and National Dalit Commission also make occasional visits to police detention centers to monitor serious human rights violation cases, but they do not have constitutional status and have not been given any specific obligations or powers.

The Nepal Police has a Human Rights Unit (NPHRU)<sup>90</sup> that was established in 2003, to monitor and investigate human rights violations by their own personnel; however victims regularly report that they do not trust it, fearing further torture and ill-treatment if complaints are made.

In cases of serious human rights violations, the Police Department and the Ministry of Home Affairs can form special investigation committees; however they are accused of being unilateral and biased, because they do not include representatives of the victims or civil society and they are not obliged to publish their findings. Furthermore, although these mechanisms do exist for the investigation and prosecution of torture and ill-treatment, many other legal, administrative and monetary barriers to justice remain for the victims of torture and their families.

## 1. MONITORING AND INVESTIGATION OF TORTURE

### A) NATIONAL HUMAN RIGHTS COMMISSION

In January 2012, a new law governing the NHRC was brought into force. Section 4 (a) of the National Human Rights Commission

<sup>90</sup> See <http://www.nepalpolice.gov.np/human-rights.html>. The Nepal Army and Armed Police Force also have similar units, which are not included in this report as they are not relevant to the issue of arrest and detention and torture of detainees.

Act (2012) (NHRC Act) provides that the “NHRC shall monitor detention centers and prisons, and provide suggestions and recommendations to the government and concerned bodies for the reform of each institution.”<sup>91</sup> Despite publically announcing its intention to step-up its efforts to investigate human rights violations in detention centers, this simply has not happened.<sup>92</sup> In reality, the NHRC makes relatively few visits to police detention centers to monitor and investigate complaints of torture and ill-treatment by detainees. According to the NHRC 2012 annual report, it made only four visits to detention places to monitor torture cases during the year 2011/12.<sup>93</sup>

According to the same annual report, the NHRC received 276 complaints of human rights violations, 45 of which were torture-related, between April 2011 and July 2012. In response the NHRC made 104 recommendations for the Government to provide compensation, take departmental action and/or provide interim relief, though it is not specified in the report how many of these recommendations related to torture. In comparison, Advocacy Forum (AF) visited 3,773 detainees during 2012, recording 841 complaints of torture or other forms of ill-treatment.<sup>94</sup>

It is highly unlikely that the NHRC’s recommendations will have been fully implemented by the authorities, given that figures for the previous year show that 386 recommendations were made for

<sup>91</sup> The 2012 Act is available at: [http://www.lawcommission.gov.np/en/prevaling-laws/prevaling-acts/Prevaling-Laws/Statutes---Acts/English/National-Human-Rights-Commission-Act-2068-\(2012\)/](http://www.lawcommission.gov.np/en/prevaling-laws/prevaling-acts/Prevaling-Laws/Statutes---Acts/English/National-Human-Rights-Commission-Act-2068-(2012)/)

<sup>92</sup> Detention Monitoring Guidelines of NHRC is available at: [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Detention%20Guideline%20Nep2067.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Detention%20Guideline%20Nep2067.pdf)

<sup>93</sup> Annual Report of NHRC 2011/12, p. 48, available (in Nepali only) at: [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Annual%20Report%202068-69%20Nep.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual%20Report%202068-69%20Nep.pdf)

<sup>94</sup> This equated to 22.3% of the detainees included in the research. For more statistical analysis of torture trends according to AF research, see Chapter 1 of the Report.

compensation and/or disciplinary action against the perpetrators, but only 34 (8.8%) were fully implemented, 138 (35.8%) were partially implemented and 214 (55.4%) were not implemented at all.<sup>95</sup>

The NHRC also has a poor record of investigating cases referred to it by AF. From 2008 to 2011, AF reported 176 cases of torture to the NHRC. In reply, AF received responses in just 16 cases. During the period from June 2012 to May 2013, AF reported 23 torture cases to the NHRC seeking immediate intervention and investigation. So far the NHRC has responded to just one of these cases via its Far Western Regional Office.

The powers of the NHRC have been greatly curtailed both under the new NHRC Act (2012) and by the lack of political will on the part of the State, which have served to hamper the autonomy, independence and efficiency of NHRC and prevented it from operating effectively. These include: the six month statutory limitation period of filing complaints, weak provisions for the prosecution of human rights violators, non-implementation of NHRC's recommendations by the State, the economic and administrative dependence of the NHRC on the Government, frequently changing Governments and policies, lack of human and infrastructural resources to assist the functioning of the NHRC and internal factions and divisions within the Commission.

In his concluding remarks following his visit to Nepal in 2005, Special Rapporteur on Torture Manfred Nowak acknowledged

<sup>95</sup> In one decade, from its establishment in 26 May 2000 to 27 May 2010, it received 10,507 cases of human rights violations. Among them 2,872 cases were finalized by the NHRC till May 2010. The NHRC summary report "NHRC Recommendations Upon Complaints in a Decade (2000 – 2010)", p. 7 & 8 is available at: [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Sum-Report-NHRC-Recommendation.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Sum-Report-NHRC-Recommendation.pdf)

the importance of establishing a fully independent national mechanism for the monitoring and investigation of torture, concluding that it was vital that Nepal ratified the Optional Protocol on Convention against Torture (OPCAT), which provides for such a monitoring mechanism to be created and be allowed to operate in all places where people may be deprived of their liberty.<sup>96</sup>

In January 2011, the Nepal Government was again urged to ratify OPCAT, this time by several member states during the United Nations Universal Periodic Review of Nepal.<sup>97</sup> This was echoed by the United Nations Committee Against Torture (the Committee) in its report published in October 2012,<sup>98</sup> as well as by numerous NHRIs and NGOs who continue to lobby for its ratification. Despite these efforts, the Nepal Government has so far refused to consider the ratification of OPCAT, claiming that the NHRC already provides an adequate protection mechanism to monitor and investigate human rights violations in Nepal.

## **B) OFFICE OF ATTORNEY GENERAL**

Article 135 (3)(c) of the IC provides that the Office of the Attorney General (OAG) is required to investigate complaints

<sup>96</sup> Mr. Manfred Nowak, Special Rapporteur on Torture's report on Nepal is available at: <http://www.unhchr.ch/huridocda/huridoca.nsf/2f80d5ef4fbd3b49c1256b26003d73ba/21a5c0bf8cbe2b86802566520033effc?OpenDocument>

<sup>97</sup> Action Plan on the implementation of UPR Recommendations (SN no. 120) is available at: [http://www.opmcm.gov.np/uploads/resources/file/Action\\_plan\\_UPR\\_2012\\_0626120540.pdf](http://www.opmcm.gov.np/uploads/resources/file/Action_plan_UPR_2012_0626120540.pdf)

<sup>98</sup> Committee against Torture, recommendation (o) writes, "The State party should consider ratifying the Optional Protocol to the Convention, which would provide for the establishment of a national protection mechanism with the authority to make periodic visits to places of detention. For full report please visit: <http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf>

of violations of the constitutional rights of detainees in police custody, received from victims, their relatives or lawyers and give necessary directions to the authorities to prevent the recurrence of such situations.<sup>99</sup> However, in AF's experience, the OAG does not fulfill this duty, making very few visits to police detention centers to monitor human rights.

According to its own report, the OAG (for the first time since being given the responsibility under the IC in 2007), spent just three days visiting 10 detention centers in 10 districts, interviewing just 10% of the detainees at each center.<sup>100</sup> Apart from this one-off study, it seems the OAG chooses instead to forward cases on to the NHRC or the Nepal Police Human Rights Unit (NPHRU), arguing that they are both competent bodies, capable of investigating such matters.

During 2012, AF referred 7 cases of torture to the OAG requesting protection and investigation. To date, AF has received no response despite several requests in writing and verbally during meetings regarding the progress of such cases. In one meeting, OAG representatives told AF that it would be forwarding the cases to the NPHRU and the NHRC, as they were competent investigatory bodies fit for the task.

At the district level, the OAG is in a critical position to prevent and investigate torture due to the requirement of Section 9 (1) of

<sup>99</sup> Article 135 (3) (c) of the IC provides that, "On a complaint alleging that any person held in custody has not been treated humanely subject to this Constitution or such person has not been allowed to meet his or her relative in person or through his or her legal practitioner, or on receipt of information of such matter, to inquire there into and give necessary directive to the concerned authority to prevent such act."

<sup>100</sup> AG Office Bulletin is available at: <http://attorneygeneral.gov.np/document/Bulletin/Bulletin10/final%20Buletine%2010.pdf>

the State Cases Act 2049 (1992) which provides that the written statements of accused persons must be taken by the investigating police personnel in the presence of a Government Attorney. However, torture survivors have complained to AF that they are forced to sign statements which have already been prepared by the police and do not leave space for them to make complaints about their treatment. Moreover, they report that they are often too afraid or unable to raise complaints about police torture in front of Government Attorneys because the same police officer(s) who tortured them are present at the time.

During meetings with AF, representatives of the OAG confirmed that excessive work pressures mean that Government Attorneys do not always have time to take statements from every detainee in detail, and rely on police to draft them.

### C) NEPAL POLICE HUMAN RIGHTS UNIT

Established in 2003, the Nepal Police Human Rights Unit (NPHRU) was set up with the aim of “upholding the realm of International standards of human rights in policing” and is responsible for the monitoring of human rights practices within the organization. Among its primary objectives are the training of police personnel on human rights issues, investigating alleged human rights abuses, recommending appropriate action against police personnel found guilty of human rights violations, maintaining a database of human rights violations and building working relation with national and international human rights organizations.<sup>101</sup>

<sup>101</sup> <http://www.nepalpolice.gov.np/human-rights.html>

AF has worked closely with the NPHRU since its inception and communicates human rights abuse cases to it on a regular basis. In 2012, AF informed the Unit of a total of 8 cases of torture that occurred in police custody, but unfortunately no response was ever received, despite several requests for feedback on the progress of these cases. AF understands that rather than investigate the cases themselves, the Unit simply forwards them to the police officer concerned and requests information on the case. Such practices achieve nothing, other than to put the victims of torture and ill-treatment in an even more vulnerable position and at risk of further torture.

According to figures published on the NPHRU website, the Unit has recommended disciplinary action against 20 police personnel (3 senior officers and 17 lower ranks) in 2011. Since its establishment it reports to have made recommendations against 485 police personnel for human rights violations; however more detailed information is not made available to the public, therefore these figures cannot be verified, nor can it be established how many of these recommendations have been implemented by the Nepal Police authorities.<sup>102</sup>

#### D) SPECIAL INVESTIGATION COMMITTEES

On some rare occasions, pressure from the relatives of victims and the general public, following the death of a person in custody, leads to the establishment of a Special Investigation Committee, either by the Police Department or the Ministry of Home Affairs. These committees are formed of either senior officers of the

<sup>102</sup> The report of NPHRU is available at: <http://www.nepalpolice.gov.np/human-rights.html>

Ministry of Home Affairs and a number of Police Officers, or solely of Police Officers. They do not allow representatives of the victim, civil society groups or other interested parties to participate. This has led to criticisms that they are unilateral and lack credibility and transparency, while the conclusions they draw are regularly called into question.

AF has first-hand experience of how difficult it is to have a custodial death investigated sufficiently by a Special Investigations Committee, after working closely with the father of 16-year-old Dharmendra Barai, who died in police custody in Rupandehi district under suspicious circumstances on 4 July 2010. Due to public pressure, a local level investigation committee was formed, but it could not establish the cause of death. Eventually the Ministry of Home Affairs formed another higher level committee, but this committee never made its report public and to AF's knowledge, no action was taken against the police officers involved.

Aside from the above mechanisms, no other body is responsible for the monitoring and investigation of human rights abuses in police custody. Although Section 18 (4) of the Prison Act, 2019 (1963), assigns responsibility on the Appellate Court and the District Administration Office to monitor the human rights conditions in Nepali prisons; this does not apply to detainees in police custody. Likewise, as a quasi-judicial body and the administrative head of the district, CDOs, also have no legal obligation to monitor police detention centers.

## 2. LEGAL PROCEEDINGS OF TORTURE CASES

### A) 35-DAY STATUTORY LIMITATION PERIOD FOR REPORTING TORTURE

Under Section 5 (1) of the Compensation Relating to Torture Act (1996) (CRT Act), victims of torture may file a complaint at the district court within 35 days after the date when he has been tortured, or released from detention. However, many torture victims who have suffered from physical and mental torture find themselves unable to file a case within the stipulated time. As well as the physical and mental trauma involved, victims find it difficult to decide whether or not to proceed with a complaint due to fear of police reprisals, a lack of information on their rights, and lack of money to hire a lawyer to assist them. Furthermore, without an adequate victim and witness protection mechanism, many torture survivors are fearful of filing cases against powerful perpetrators who are often defended by a Government Attorney, paid for by the State.

AF has many years of experience working with torture survivors, many of whom failed to file their case within the stipulated timeframe and as a result they were dismissed. For example: three torture cases filed by Ram Chandra, Bishnu and Dev were dismissed by the District Court, Dolakaha in July 2010 for missing the 35-day deadline.

In 2008, the Supreme Court of Nepal ruled that the 35-day statutory limitation provision in rape cases was both “unreasonable” and “unrealistic” directing for the law to be amended as soon as possible.<sup>103</sup> Recognizing that the 35-day statutory limitation is a

<sup>103</sup> Sapana Pradhan Malla Vs. Government of Nepal, Nepal Law reporter 2065, volume 11, page 1358-1366

major weakness of the Nepali criminal justice system, the OAG has also recommended that the Government of Nepal extend it in accordance with the directive order by the Supreme Court.<sup>104</sup> Likewise, the UN Special Rapporteur on Torture also raised this issue in 2005, calling for Nepal's law to be brought in line with international standards.<sup>105</sup>

Despite these recommendations, the Government has so far failed to take steps to amend the law. In fact, it incorporated a provision into the Draft Anti-Torture Bill in 2012, which imposes a 35-day period of limitation, despite it being contrary to Paragraph IV (6) of the Basic Principles and Guidelines on Reparation and Remedy and other international standards and the Supreme Court order.<sup>106</sup>

## **B) THE PROVISION OF GOVERNMENT ATTORNEYS TO APPEAR ON BEHALF OF ALLEGED PERPETRATORS**

Section 10 of CRT provides that when an “appropriate office chief” requests legal assistance in connection with a complaint filed against the police, a Government Attorney “may defend the case before a court on behalf of such employee”. Furthermore, Section 4 of the same Act provides that if “it is proved that any employee of the Nepal Government has inflicted torture on any person, compensation shall be paid to the victim according to this act”. This means that perpetrators are not individually liable

<sup>104</sup> Annual Report, Office of Attorney General 2065/66, page 67.

<sup>105</sup> [http://un.org.np/sites/default/files/report/tid\\_188/2006-1-9-special-report-on-torture-visitsept.pdf](http://un.org.np/sites/default/files/report/tid_188/2006-1-9-special-report-on-torture-visitsept.pdf)

<sup>106</sup> Para IV (6) of Basic Principle provides, “Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.”

for the consequences of their actions. This is against the provision of Para III (4) of Basic Principles and Guidelines on Right to Remedy and Reparation.<sup>107</sup> Such provisions have encouraged torture and ill-treatment in police detention facilities.

### C) PROBLEMS WITH MEDICAL EXAMINATIONS

Section 5 (3) of CRT Act provides that “In case any adult member of the family of a detainee or his attorney feels that the detainee has been tortured, he may file a petition to the appropriate district court”. Once in receipt of a physical and mental examination application, the Court can issue an order for the examination of the physical and mental condition of the detainee within three days. However, due to common delays in being given access to a lawyer, slow court proceedings and a lack of human resources to process and implement court orders, in most cases, the evidence of injuries has disappeared or are greatly reduced by the time the detainee is seen by a doctor. As a result, even when a case is filed under the CRT Act a significant proportion of the cases are quashed or dismissed by the court on the ground of weak medical evidence. According to data gathered by AF, out of 140 torture cases filed by AF, 20 cases were quashed or dismissed by the court on the ground of inadequate or weak medical evidence from 2001 to 2012.

If in the course of a medical examination it is found that treatment is necessary, Section 5 (3) of CRT stipulates that such treatment

<sup>107</sup> Paragraph III (4) provides, “In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.” Full text is available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

should be made available and be funded by the state.<sup>108</sup> However when examinations are ordered, the victim is normally expected to pay the doctor's fee.

In some instances District Courts have also refuse to register petitions for medical examinations. In one recent example, Mr. Dinesh, 26, from Kathmandu, a torture survivor, filed an application before the District Court, Kathmandu on 3 July 2012 requesting an order for a physical and mental examination; however the registrar of the court refused to register the petition saying that public offence related cases were handled by the District Administration Office. Dinesh was reportedly tortured by 3, 4 unidentified policemen on 29 and 30 June and 1 July 2012. He was beaten with bamboo sticks on the soles of his feet, punched with fists and kicked with police boots. Each day he was reportedly tortured for about half an hour and he sustained bruises on his back and bottom. According to the victim he suffers from pain in his legs, burning sensation on the soles of his feet, dizziness, sleepless nights and breathing problem. After sustained efforts by the victim and AF lawyers, the application was registered and he was given a medical examination and treatment.<sup>109</sup>

#### D) BURDEN OF PROOF AND LIABILITY FOR VICTIMS

Under Section 6 (2) of the CRT Act, if the complaint was found *mala fide*, the complainant may be punished with a fine of NRs. 5,000 (approximately US\$60). This means that the onus is on the torture victim to prove that torture occurred, or risk having to pay this substantial fine. In AF's experience, this provision has

<sup>108</sup> The Compensation Relating to Torture (2053) 1996 is available at: <http://www.lawcommission.gov.np/en/prevaling-laws/prevaling-acts/func-startdown/423/>

<sup>109</sup> AF interview, May 2013.

discouraged many torture victims from filing a case under the CRT. As discussed above, it can be very difficult for victims to receive the necessary medical examination that would prove they had been tortured or ill-treated, leaving them open to accusations that they have filed a false claim and liable for this financial penalty.

Since its establishment in 2001, AF has filed 140 cases under the CRT Act before different District Courts, of which 16 cases were in 2012. Among these 140 cases, 28 cases were decided in favour of the victims, with compensation awarded to them. In only 11 cases departmental action against the perpetrators was ordered, while 5 cases were withdrawn by the complainants and 20 cases were dismissed on the ground of insufficient evidence. Altogether 76 cases filed by AF under the CRT Act remain pending in the courts.

### 3. REPARATIONS TO TORTURE SURVIVORS

Article 14 of CAT provides that “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.” However, the reality in Nepal is that the victims of torture and ill-treatment are not provided with adequate compensation, reparation, or justice. Inadequate compensation to victims, delays in court proceeding and a lack of punishment for perpetrators who are found responsible for torture all serve to discourage torture survivors from bringing forward their complaints.

Section 6 (1) of the CRT Act provides that compensation paid to the victim by the Government must not exceed NRs. 100,000 (\$1100 USD). In reality, this maximum amount is rarely ordered by the Court. In fact, in AF’s experience, most cases in which a

successful prosecution is achieved only ever result in nominal compensation for the victims, which barely covers court fees and goes no way towards providing adequate compensation for the harm caused to the physical and mental integrity of the victim.

In June 2013, the Banke District Court ordered relatively substantial amounts of compensation to two victims of torture, after their cases were brought with the help of Advocacy Forum. On 2 June 2013, the court awarded Nizamuddin Shekh compensation of NRs. 95, 000/- (US\$ 1052) and on 9 June 2013 it awarded Harkali Pun alias Duji compensation amounting NRs. 51, 000/- (US\$ 547). However, in neither case was any departmental action ordered against the perpetrators.

Section 10 (10) of the Summary Procedures Act, provides that “Cases shall be disposed within ninety days after the submission of the note of defense or after the taking of statement”<sup>110</sup> Despite this, the reality is that cases can take years to be heard and decided by the Court. This places added burdens on victims, both financially and emotionally, and acts as a further deterrent to those who wish to bring a case and seek justice for the harm they have suffered.

#### **4. LACK OF IMPLEMENTATION OF DISTRICT COURT ORDERS FOR DEPARTMENTAL ACTION**

In some rare cases where the courts have ordered departmental action, the relevant institutions (mainly the Nepal Police) are not

<sup>110</sup> See Section 10 (10) of the Summary Procedures Act available at: <http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Statutes---Acts/Summary-Procedures-Act-2028-%281972%29/>

implementing the orders. The following example demonstrates the problems encountered by victims of torture who are trying to seek justice:

On 18 September 2009, Arjun Gurung, 26, filed a case under the CRT Act before the District Court, Kathmandu after being tortured by senior level police officers while being held in police custody. During legal proceedings both he and his



lawyers were threatened and pressurized to withdraw the case by the perpetrators themselves. Despite overwhelming evidence of torture, including photographs and medical reports, his case was delayed for more than two years, until finally on 29 December 2011 the Kathmandu District Court referred the case to the Court Mediation Center for settlement. The victim filed an application before the Appellate Court, Patan against the decision of the District Court arguing that mediation was not an appropriate way to handle torture. On 29 March 2012, the Appellate Court, Patan quashed the decision of the District Court, Kathmandu and ordered for the case to proceed before the district court. Finally, on 9 July 2012, the District Court, Kathmandu awarded NRs. 30,000 (approximately US\$348) compensation to torture victim. However, no departmental action was awarded against the perpetrators on the basis that the perpetrators had had no subjective satisfaction to inflict torture on victim.<sup>111</sup>

<sup>111</sup> Arjun Gurung v. Govt., Criminal Case no. 0032(2066), Decision no. 700, date 2069/03/25.

## CONCLUSIONS AND RECOMMENDATIONS

The analysis of AF's findings during its regular visits to 57 places of detention in 20 districts of Nepal, as presented in this report demonstrates that Nepal has failed to fulfill its domestic and international obligations to investigate, punish and prevent the use of torture against its citizens held in detention by state officials.

Figures presented in Chapter 1 show that while there may have been a small decrease in reports of torture over the past year, more than 22% of detainees interviewed by AF lawyers reported that they were subjected to torture or other cruel, inhumane or degrading treatment as defined by Article 1.1 and 16 of the Convention Against Torture (1984) (CAT). In some districts this figure rose to over 37%, while figures for juveniles rose to over 34% across the country as a whole and leapt to over 50% in five of the districts included in the research. Although the research finding of the Office of the Attorney General (OAG) do not mirror exactly those of AF, it too reported worryingly high rates of torture, with 15% of the population included in the three-day study reporting suffering treatment that amounts to torture.

Despite this, comments and observations submitted by Nepal to the United Nations on 8 August 2011 claimed that "Allegations of

systematic practice of torture is essentially an unfair and unilateral story created against Nepal”. Furthermore it stated that “Nepal would like to note that the Special Rapporteur’s interpretation of the situation does not correspond to ground realities, Nepal would like to reiterate that it rejects the conclusion about the existence of systematic practice of torture in its territory.”<sup>112</sup>

Under both national and international laws, Nepal is obliged to protect the rights of detainees, criminalize torture and promote human rights in government detention facilities. Despite this, Chapter 2 showed that the Nepal Government has so far failed to take effective measures to criminalize torture or prevent its use by state officials, leaving Nepal lumbered with laws that are wholly inadequate and incapable of providing the necessary safeguards to protect its citizens from such human rights abuses. Although orders from the Supreme Court and pressure from National Human Rights Institutions, NGOs and civil society groups were successful in moving the Government in the right direction towards establishing more robust laws, all progress was sadly thwarted by the ongoing constitutional and parliamentary crisis that continues to affect the country.

In this context, the research by AF highlighted in Chapter 3 found that the rights of detainees, as established under both the Interim Constitution of Nepal and under various domestic laws and international treaties, are being routinely violated from the moment of arrest to the point of conviction or release. Typical accounts provided by detainees included being manhandled and verbally abused during arrest and transfer to police custody, being detained arbitrarily without a detention letter and without

<sup>112</sup> Part 2 “Comments and observation submitted by Nepal on 8 August 2011, no 115, available at: <http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf>

the detention being registered, being held incommunicado for long periods of time without adequate food or water or medical check-up, being refused access to a lawyer, being interrogated by police officers using physical and mental torture in order to extract false confessions, being falsely charged with crimes, and being forced to sign paperwork prepared by police without their consent, which is then used in Court in order to secure a conviction against them. Alongside these breaches of basic human and fair-trial rights, AF has also found systemic failures within the criminal justice system, such as the diversion of cases away from competent Courts and lack of legal aid for the poor, which have created significant barriers to justice for countless numbers of Nepali citizens, while serving to further enforce a culture of impunity in which these practices are deemed widely acceptable and as a result, go unpunished.

Finally, Chapter 4 of the report demonstrated why the current mechanisms in place for the monitoring of human rights and investigation of torture by state officials - namely the National Human Rights Commission and the Office of the Attorney General - are incapable of meeting the task in hand, while the Nepal Police Human Rights Unit and the ad-hoc Special Investigation Committees formed only in extraordinary circumstances are neither transparent nor trusted. The continuing lack of an independent, autonomous and adequately resourced body to monitor detention facilities and investigate allegations of torture mean that victims of torture do not have a reliable and trustworthy avenue to justice. Torture survivors, who do seek justice and reparations through the Courts encounter significant obstacles within a system full of rules that are designed not to assist the victims of human rights abuses, but to protect those who are alleged to have perpetrated these crimes. With the significant

financial and evidential burdens involved and the prospect of only inadequate compensation if successful, it is not surprising that so few torture victims come forward to hold the perpetrators to account.

The findings in this report come in the wake of the publication of research carried out by the United Nations Committee Against Torture (the Committee) following its six-year long inquiry into the use of torture in Nepal. The report confirmed that torture is indeed being practiced systematically across considerable parts of Nepal and found the Nepal state to be guilty of “more than a casual failure to act” appearing to be “acquiescent in” the policies that “shields and further encourages” the use of torture.<sup>113</sup> Such conclusions show that despite an end to the armed conflict little progress has been made since the United Nations Special Rapporteur on Torture visited Nepal in 2005, when it was found that torture was being systematically practiced and due-process safeguards were “largely illusory in practice”.<sup>114</sup>

What is clear from this most recent research by Advocacy Forum is that the Nepal Government continues to be either unable or unwilling to acknowledge the reality of the situation or take adequate steps to prevent the use of torture and punish those perpetrators who operate under its authority. In order to go some way towards addressing the most pressing issues outlined in this report, AF wishes to make the following recommendations:

<sup>113</sup> CAT report, para 100-104.

<sup>114</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=3907&LangID=E>

## RECOMMENDATIONS:

1. Repeal the Compensation Relating to Torture Act 2053 (1996) (CRT) as soon as possible and replace it with new anti-torture laws, in consultation with civil society, victims' groups and human rights NGOs.
2. Ratify the Optional Protocol to the Convention Against Torture (OPCAT) and form an independent National Monitoring Mechanism to monitor the human rights of detainees in government detention facilities.
3. Take steps to end the culture of impunity that persists by establishing adequate reparations for victims and proper punishments for perpetrators.
4. Establish an effective and impartial authority for the prosecution of torture, which is independent from the government and open for victims to cooperate with without fear of reprisals.
5. Increase the powers of constitutional bodies such as the National Human Rights Commission to monitor, investigate and prosecute cases of torture and other ill-treatment, and ensure any recommendations are fully and promptly implemented.
6. The Human Rights Units of the security forces must be made more effective and should be required to submit detailed annual reports to a civilian oversight body such as a National Police Commission.

7. Establish a robust vetting system for all security personnel so that perpetrators of human rights abuses are not able to hold positions of authority and scrupulously screen any security personnel put forward for participating in UN peacekeeping missions or UN jobs.
8. Establish an effective victim and witness protection mechanism.
9. Make the National Women's Commission and Dalit Commission statutory bodies with powers to investigate human rights violations against women and Dalits respectively.
10. Create a law allowing private prosecutions in cases of torture
11. Ensure the independence of the Truth and Reconciliation Commission and the Commission for the Investigation of Disappearances, and that they are not given powers to grant amnesty for grave human rights violations, including torture.

**Table 1: Torture percentage (Jan-Dec 2012)**  
**Torture and CIDT information**

		Frequency	Percent
Valid	Yes	841	22.3
	No	2,932	77.7
	<b>Total</b>	<b>3,773</b>	<b>100</b>

**Table 2: Gender-wise torture & CIDT reports**  
**Torture and CIDT information**

			Torture and CIDT information		Total
			Yes	No	
Gender	Female	Count	36	348	384
		% within Gender	9.4%	90.6%	100%
	Male	Count	804	2,580	3384
		% within Gender	23.8%	76.2%	100%
	Transgender	Count	1	4	5
		% within Gender	20%	80%	100%
Total		Count	841	2932	3773
		% within Gender	22.3%	77.7%	100%

**Table 3: District-wise percentages of torture**

	Torture and CIDT information		Total
	Yes	No	
Kathmandu	Count	269	425
	% within Detention Place	63.3%	100.0%
Morang	Count	201	233
	% within Detention Place	86.3%	100%
Banke	Count	176	255
	% within Detention Place	69%	100%
Kaski	Count	284	453
	% within Detention Place	62.7%	100%
Kanchanpur	Count	237	241
	% within Detainee Place	98.3%	100%
Udhayapur	Count	95	113
	% within Detention Place	84.1%	100%
Surkhet	Count	109	143
	% within Detention Place	76.2%	100%
Kapilbastu	Count	96	120
	% within Detention Place	80%	100%

	Torture and CIDT information	Total		
		Yes	No	
<b>Detention Place</b>	Lalitpur	Count	52	53
		% within Detention Place	98.1%	100.0%
	Rupandehi	Count	392	455
		% within Detention Place	86.2%	100.0%
	Dhanusha	Count	84	106
		% within Detention Place	79.2%	100.0%
	Baglung	Count	190	242
		% within Detention Place	21.5%	100.0%
	Myagdi	Count	72	79
		% within Detention Place	91.1%	100.0%
	Parbat	Count	51	60
		% within Detention Place	85.0%	100.0%
	Bardiya	Count	88	123
		% within Detention Place	71.5%	100.0%
	Ramechhap	Count	47	61
		% within Detention Place	77.0%	100.0%
	Dolakha	Count	150	153
		% within Detention Place	98.0%	100.0%

	Torture and CIDT information		Total
	Yes	No	
Jhapa	Count	175	239
	% within Detention Place	73.2%	100%
Sunsari	Count	40	59
	% within Detention Place	67.8%	100%
Siraha	Count	124	160
	% within Detention Place	77.5%	100%
<b>Total</b>	<b>Count</b>	<b>2932</b>	<b>3,773</b>
	<b>% within Detention Place</b>	<b>77.7%</b>	<b>100%</b>

**Table 4: Torture in relation to caste group**

Caste & Ethnicity	No. of detainees tortured	Percentage of detainees tortured	No. of detainees from this background	Percentage of detainees from this background
Brahmin	70	8.3%	370	9.8%
Chhetri	193	22.9%	902	23.9%
Newar	28	3.3%	161	4.26%
Indigenous	216	25.68%	896	23.74%
Terai ethnic group	134	15.93%	578	15.31%
Dalit	110	13%	445	11.79%
Muslim	27	3.21%	104	2.75%
Others	63	7.49%	317	8.4%
<b>Total</b>	<b>841</b>	<b>100%</b>	<b>3773</b>	<b>100%</b>

**Table 5: Torture inflicted in relation to charges**

Charge	Torture and CIDT information.		Total
	Yes	No	
Public Offences Act	Count	823	1,073
	% within Charge	76.7%	100%
Attempted Murder	Count	119	156
	% within Charge	76.3%	100%
No Charge	Count	329	456
	% within Charge	72.1%	100%
Drugs-related Offences	Count	559	693
	% within Charge	80.7%	100%
Rape	Count	107	136
	% within Charge	78.7%	100%
Arms and Ammunition Act	Count	27	46
	% within Charge	58.7%	100%
Theft	Count	214	319
	% within Charge	67.1%	100%
Robbery	Count	8	18
	% within Charge	44.4%	100%

	Torture and CIDT information.		Total
	Yes	No	
Murder	Count	36	232
	% within Charge	13.4%	86.6%
Attempted Rape	Count	0	1
	% within Charge	0%	100%
Offence under Forestry Act	Count	30	96
	% within Charge	23.8%	76.2%
Gambling	Count	0	48
	% within Charge	0%	100%
Human Trafficking	Count	4	36
	% within Charge	10%	90%
Forgery	Count	8	35
	% within Charge	18.6%	81.4%
Vehicular Homicide	Count	0	103
	% within Charge	0%	100%
Cheating.	Count	9	44
	% within Charge	17%	83%

Charge

Charge	Torture and CIDT information.		Total
	Yes	No	
Vehicular Maiming	Count	2	2
	% within Charge	100%	100%
Kidnapping	Count	20	36
	% within Charge	44.4%	100%
Polygamy	Count	3	76
	% within Charge	3.9%	100%
Assault and battery	Count	4	4
	% within Charge	100%	100%
Arson	Count	11	20
	% within Charge	45%	100%
Abortion	Count	5	6
	% within Charge	16.7%	100%
Black Racketeering	Count	0	1
	% within Charge	100%	100%
Attacks on women alleged to be involved in witchcraft	Count	10	10
	% within Charge	100%	100%

		Torture and CIDT information.		Total
		Yes	No	
Charge	Offences under the Explosives Act	Count 8	4	12
		% within Charge 66.7%	33.3%	100%
	Cow Slaughtering	Count 4	19	23
		% within Charge 17.4%	82.6%	100%
	Sodomy	Count 1	2	3
		% within Charge 33.3%	66.7%	100%
	Caste Discrimination	Count 0	1	1
		% within Charge 0%	100%	100%
Total		Count 841	2932	3,773
		% within Charge 22.3%	77.7%	100%

**Table 6: Age-wise torture  
Age. \* Torture and CIDT information**

		Torture and CIDT information.		Total
		Yes.	No.	
10	Count	3	2	5
	% within Age	60%	40%	100%
11	Count	1	1	2
	% within Age	50%	50%	100%
12	Count	10	5	15
	% within Age	66.7%	33.3%	100%
13	Count	20	17	37
	% within Age	54.1%	45.9%	100%
14	Count	39	38	77
	% within Age	50.6%	49.4%	100%
15	Count	70	87	157
	% within Age	44.6%	55.4%	100%

Age

	Torture and CIDT information.		Total
	Yes.	No.	
16	Count	94	156
	% within Age	60.3%	100%
17	Count	165	221
	% within Age	74.7%	100%
18	Count	198	260
	% within Age	76.2%	100%
<b>Total</b>	<b>Count</b>	<b>607</b>	<b>930</b>
	<b>% within Age</b>	<b>34.7%</b>	<b>100%</b>

**Table 7: Prevalence of torture of juveniles per district**

	Torture and CIDT information.		Total
	Yes.	No.	
Kathmandu	Count	53	92
	% within Detention Place	57.6%	42.4%
Morang	Count	3	21
	% within Detention Place	14.3%	85.7%
Banke	Count	10	25
	% within Detention Place	40%	60%
Kaski	Count	22	75
	% within Detention Place	29.3%	70.7%
Kanchanpur	Count	1	13
	% within Detention Place	7.7%	92.3%
Udhayapur	Count	5	15
	% within Detention Place	33.3%	66.7%
Surkhet	Count	2	6
	% within Detention Place	33.3%	66.7%

		Torture and CIDT information.		Total
		Yes.	No.	
Kapilbastu	Count	5	13	18
	% within Detention Place	27.8%	72.2%	100%
Lalitpur	Count	0	4	4
	% within Detention Place	0%	100%	100%
Rupandehi	Count	15	57	72
	% within Detention Place	20.8%	79.2%	100%
Dhanusha	Count	5	7	12
	% within Detention Place	41.7%	58.3%	100%
Baglung	Count	10	17	27
	% within Detention Place	37%	63%	100%
Myagdi	Count	1	4	5
	% within Detention Place	20%	80%	100%
Parbat	Count	0	2	2
	% within Detention Place	0%	100%	100%

	Torture and CIDT information.		Total	
	Yes.	No.		
Detention Place	Bardiya	Count 11	5	16
		% within Detention Place 68.8%	31.2%	100%
	Ramechhap	Count 6	3	9
		% within Detention Place 66.7%	33.3%	100%
	Dolakha	Count 0	20	20
		% within Detention Place 0%	100%	100%
	Jhapa	Count 10	13	23
		% within Detention Place 43.5%	56.5%	100%
	Sunsari	Count 0	1	1
		% within Detention Place 0%	100%	100%
	Siraha	Count 2	16	18
		% within Detention Place 11.1%	88.9%	100%
Total	Count	161	313	474
	% within Detention Place	34%	66%	100%

**Table 8: Torture infliction on juveniles in relation to charges Charge. \* Torture and CIDT information.**

Charge.		Torture and CIDT information.		Total	
		Yes.	No.		
Public Offence.	Count	106	221	327	
	% within Charge.	32.4%	67.6%	100%	
	Attempt to Murder.	Count	11	22	33
		% within Charge.	33.3%	66.7%	100%
	No Charge	Count	95	96	191
		% within Charge.	49.7%	50.3%	100%
	Drugs	Count	27	95	122
		% within Charge.	22.1%	77.9%	100%
	Rape	Count	11	36	47
		% within Charge.	23.4%	76.6%	100%
	Arms and Ammunition	Count	4	3	7
		% within Charge.	57.1%	42.9%	100%

	Torture and CIDT information.		Total
	Yes.	No.	
Theft	Count	42	101
	% within Charge.	41.6%	100%
Robbery	Count	0	2
	% within Charge.	0%	100%
Murder	Count	5	41
	% within Charge.	12.2%	87.8%
Forest Offence	Count	12	20
	% within Charge.	60%	100%
Human Trafficking	Count	0	2
	% within Charge.	0%	100%
Forgery	Count	4	6
	% within Charge.	66.7%	100%
Vehicular homicide	Count	0	2
	% within Charge.	0%	100%
Cheating	Count	1	3
	% within Charge.	33.3%	100%
Kidnapping	Count	1	3
	% within Charge.	33.3%	100%

	Torture and CIDT information.		Total	
	Yes.	No.		
Charge.	Count	1	7	8
	% within Charge.	12.5%	87.5%	100.0%
	Count	2	4	6
	% within Charge.	33.3%	66.7%	100.0%
	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
	Count	1	0	1
Total	% within Charge.	100.0%	0.0%	100.0%
	Count	0	6	6
	% within Charge.	0.0%	100.0%	100.0%
	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
	Count	323	607	930
	% within Charge.	34.7%	65.3%	100.0%

**Table 9: Were the detainee taken to the court**

		Frequency	Percent
<b>Valid</b>	Yes	3,317	87.9
	No	456	12.1
	<b>Total</b>	<b>3,773</b>	<b>100</b>

**Table 10: Were you brought before a judge/competent authority within 24 hours of detention?**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	Yes	1,867	49.5	56.3	56.3
	No	1,450	38.4	43.7	100
	<b>Total</b>	<b>3,317</b>	<b>87.9</b>	<b>100</b>	
<b>Not taken to court</b>		<b>456</b>	<b>12.1</b>		
<b>Total</b>		<b>3,773</b>	<b>100</b>		

**Table 11: Was the reasons for arrest given?**

		Frequency	Percent
<b>Valid</b>	Yes.	369	9.8
	No.	609	16.1
	Given but after bringing in detention	2,795	74.1
	<b>Total</b>	<b>3,773</b>	<b>100.0</b>

**Table 12: Did you have health check-up before keeping in detention?**

		Frequency	Percent
Valid	Yes.	3579	94.9
	No.	194	5.1
	<b>Total</b>	<b>3773</b>	<b>100.0</b>

**Table 13: Government food provided?**

		Frequency	Percent
Valid	Yes.	3677	97.5
	No.	96	2.5
	<b>Total</b>	<b>3773</b>	<b>100.0</b>

**Table 14: Contact with family members permitted?**

		Frequency	Percent
Valid	Yes.	3059	81.1
	No.	714	18.9
	<b>Total</b>	<b>3773</b>	<b>100</b>

**Table 15: If brought before court/other judicial authority for remand did judge/judicial officer ask whether T/CIDT had occurred?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	613	16.2	18.5	18.5
	No	2704	71.7	81.5	100
	<b>Total</b>	<b>3317</b>	<b>87.9</b>	<b>100</b>	
Not taken to court		456	12.1		
<b>Grand Total</b>		<b>3773</b>	<b>100</b>		