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# TORTURE BRIEFING

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## PREVENTION OF TORTURE IN NEPAL

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ADVOCACY FORUM-NEPAL  
“LAWYERS’ FORUM FOR HUMAN RIGHTS & RULE OF LAW”



### INTRODUCTION

Since its inception in 2001, Advocacy Forum- Nepal (AF) has undertaken a comprehensive body of work to reduce the systematic practice of torture in Nepal. AF lawyers currently undertake regular visits to 57 places of detention in 20 working districts<sup>1</sup> to collect data concerning torture practices and identify trends and patterns of torture using a standard questionnaire. In late 2012, the United Nations Committee against Torture (CAT) published a report after a long and detailed confidential inquiry into torture in Nepal, finding that torture continues to be systematically practiced in Nepal.<sup>2</sup> This confirmed AF's own findings, and confirms the need for urgent measures to be taken to prevent torture, and investigate any complaints more thoroughly, including by putting in place a legal and policy framework that ensures those responsible are brought to justice.

Custody monitoring not only prevents torture, but also assists the police with the implementation of their constitutional obligations, mainly ensuring detainees' access to lawyers or legal practitioners. AF's custody visits concentrate mainly on the detention facilities of District Police Offices (DPOs) and Area Police Officers (APOs) where persons are initially brought for interrogation after arrest. This is the stage of detention where detainees most often complain of being compelled to confess under torture. Monitoring police detention in areas associated with high risk of torture is part of an integrated intervention strategy by AF comprising of legal aid to detainees who lack access to lawyers, documentation of cases and patterns of torture, the initiation of court cases to obtain redress, awareness-raising among key stakeholders as well as national and international advocacy. Furthermore, AF regularly communicates torture cases to national and international bodies requesting them to put pressure on the authorities concerned to stop torture, provide medical treatment and provide security to victims in detention, where necessary, and conduct investigations. AF also provides necessary information to other international organisations working in this field.

This is the eleventh briefing in a series providing an analysis of patterns in reports of torture and other ill-treatment during the period from July to December 2012.<sup>3</sup> This briefing also discusses the conditions of juveniles in detention and the status of implementation of procedural safeguards.

### PATTERNS AND TRENDS ANALYSIS

During this reporting period (July to December 2012), AF lawyers interviewed a total of 1,873 detainees in 57 detention centres. Among them 204 were female detainees, 1,666 were males and three were transgender.<sup>4</sup> Of those interviewed, 385 detainees (20.6%) claimed that they were subjected to torture or other cruel, inhuman or degrading treatment. This shows a decrease of 3.4% when compared to the previous six months when the average number of detainees reporting torture was 24%.<sup>5</sup> Out of the 204 female detainees interviewed, 23 (11.3%) reported torture or ill-treatment which represents an increase of 4.1% compared to the previous period. Three hundred and sixty-one (21.7%) out of the 1,666 male detainees interviewed claimed that they were tortured.<sup>6</sup>

<sup>1</sup> Baglung, Banke, Bardiya, Dhanusha, Dolakha, Jhapa, Kathmandu, Kanchanpur, Kapilvastu, Kaski, Lalitpur, Morang, Myagdi, Parbat, Ramechhap, Rupandehi, Siraha, Sunsari, Surkhet and Udaypur.

<sup>2</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 adopted at the Committee's 46<sup>th</sup> session (9 May- 3June 2011). The full report can be found at: <http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexsXIII.pdf>

<sup>3</sup> Our previous briefings can be accessed at <http://www.advocacyforum.org/publications/torture.php>.

<sup>4</sup> Complete data of juveniles visited in detentions is mentioned in the section of juveniles.

<sup>5</sup> AF lawyers interviewed 1,900 detainees during January to June 2012, among whom 456 claimed that they were subjected to torture or other cruel, inhuman or degrading treatment

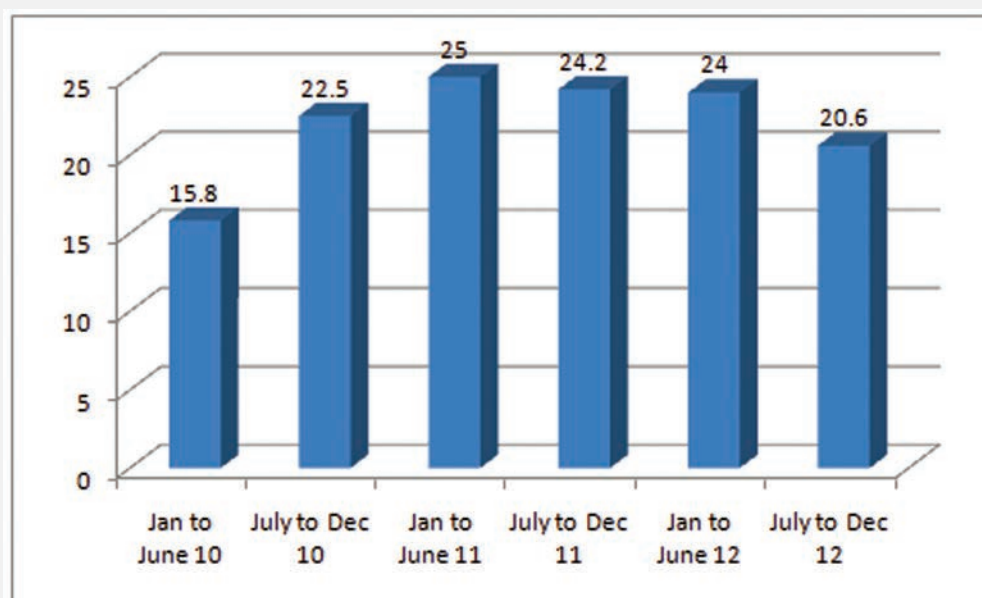
<sup>6</sup> See Annex 1: Tables 1, 2 and 3 for more details.

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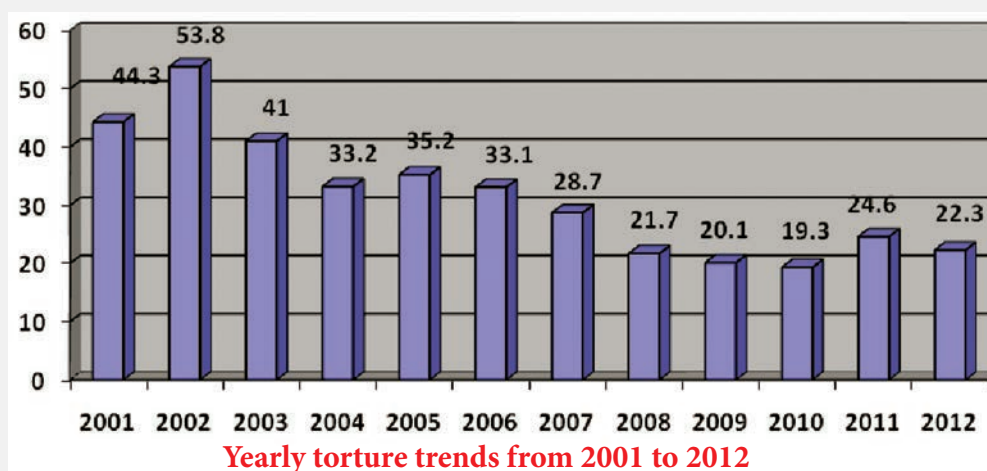
Despite the overall reduction in comparison to the first half of this year (by 3.4%), the average level recorded by AF remains above the level recorded during the period of 2008-2010. This supports the findings of the 2011 United Nations Committee against Torture (CAT) Report, which held that torture continues to be systematically and widely practiced in Nepal.<sup>7</sup> Worryingly during this reporting period, certain districts also reported very high incidents of torture compared to others. The following districts reported the highest percentage of torture: Kathmandu (39.3%), Banke (33.9%), Sunsari (37.5%), Ramechhap (33.3%) and Bardiya (26.7%).

Additionally, the high prevalence of torture among juveniles and the increase of torture reported by women are also concerning. During January to June 2012, 13 female detainees (7.2%) claimed they were subjected to torture or other ill-treatment while the figure stands at 23 (11.3%) during July to December 2012.

### *Torture Percentage since 2010*



### *Trends in Reports of Torture in 20 districts over last 6 half-year periods*



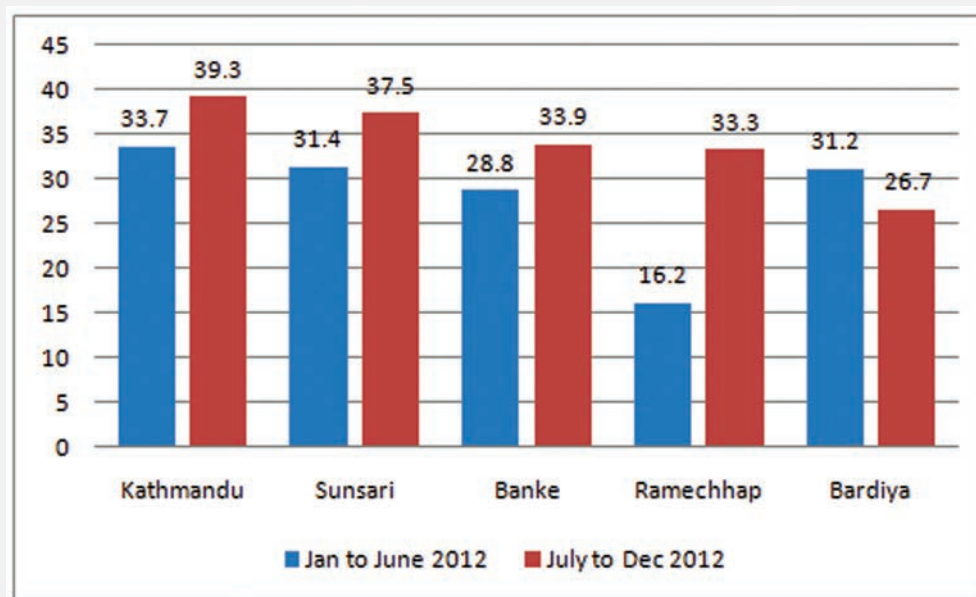
<sup>7</sup> United Nations Committee against Torture Annex XIII, Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party, 46<sup>th</sup> Session (9 May-3 June 2011), Section V, paras. 100-101.

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The graph indicates gradual fluctuation in the torture trend from 2001 to 2012. The years 2008-2010 had shown some positive signs in the reduction of torture practices in government detention facilities; however, during the year 2011 the percentage escalated by 5.3% compared to 2010. In 2012, AF figures show a slight decline of 2.3% compared to 2011. But the average stands above the average percentage of torture recorded over the period of 2008-2010. While compared to those years torture still seems to have increased.

### DISTRICT-WISE ANALYSIS

Kathmandu, Sunsari, Banke, Ramechhap and Bardiya were identified as having the highest torture percentages based on the data AF collected from the 57 detention facilities in its 20 districts. In the latter half of 2012, Kathmandu out numbered the rest of the other districts with a torture percentage of 39.3%. It is reported that 90 out of 229 (39.3%) detainees who were visited in the detentions of Kathmandu claimed that they had been tortured or ill-treated. The graph below is a comparative overview of the torture percentages in the five districts identified as “high torture zones”<sup>8</sup>



### TRENDS OF TORTURE IN 5 DISTRICTS

According to AF data, there has been a significant increase in torture in Ramechhap district from 16.2% in the previous period to 33.3%, i.e. by 17.1%, meaning twice as many people were tortured during the second half of 2012 than in the first half. Similarly, torture has also risen in Kathmandu from 33.7% to 39.3%,<sup>9</sup> in Sunsari from 31.4% to 37.5%, and in Banke from 28.8% to 33.9%. Though remaining among the top five “high torture zones”, Bardiya district markedly showed less torture than in the previous period with a 4.5% rate of decline.

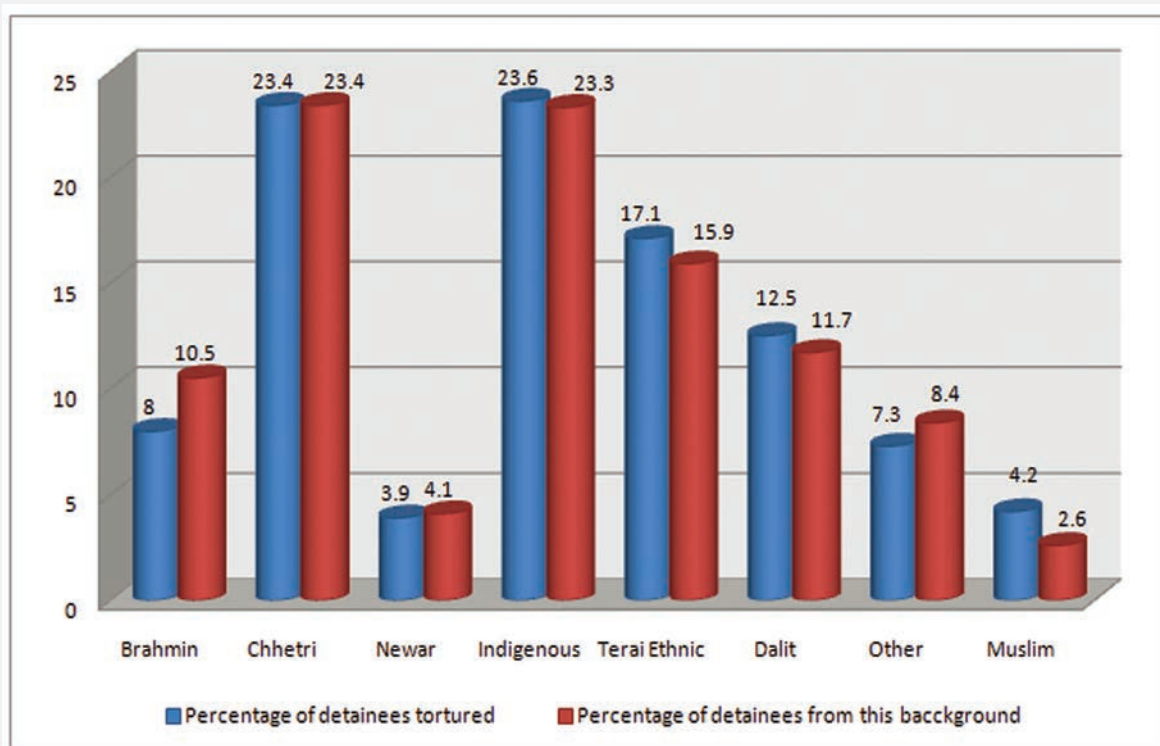
<sup>8</sup> See Table 4 in Annex 1, for details of the torture percentages of all 20 districts.

<sup>9</sup> The trends in the reporting of torture from Kathmandu district show that there is a clear increase in percentage reported: from 24.1% during July to December 2011, 33.7% during January to June 2012 and 39.3% during July to December 2012.

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### CASTE AND ETHNIC BACKGROUND

*Torture on adult detainees according to caste and ethnic background*



AF regularly analyses patterns of torture on the basis of caste and ethnic groupings. The graph above documents the percentage of torture of detainees according to their caste and ethnicity. Although people from the Terai ethnic group represent 15.9% of detainees, they comprise 17.1% of the overall number of detainees claiming tortured.<sup>10</sup> Similarly, detainees from the Dalit community face a 12.5% chance of being tortured while only representing 11.7% of detainees whereas detainees from the Indigenous community faced 23.6% chance of torture while representing 23.3% of detainees. Statistics relating to detainees of other backgrounds generally considered less disadvantaged (such as Brahmin, Chhetri and Newar) demonstrate that they are less likely to face torture.

### TRENDS ACCORDING TO CHARGES

AF's data analysis shows that people held under the following charges/allegations are at a high risk of being tortured in pre-trial detention: suspicion of possessing explosives (80%), robbery (66.7%), kidnapping (42.9%), offences under the Forestry Act (28.3%) and theft (24.2%).<sup>11</sup> It is important to note that torture of people held on suspicion of offences under the Forestry Act takes place outside police detention facilities. Such people are generally detained and questioned at forestry department offices where officials from that department are responsible for torturing the detainees. It is difficult to establish the dynamics behind the high percentage of the reported torture among people held for these crimes, however, the possible explanations include:

<sup>10</sup> See Annex 1: Table 5 for more details.

<sup>11</sup> See Annex 1: Table 6 for more details.

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1. Torture is used to speed up investigations in the cases of robbery, kidnapping, forest offenses and theft.
2. AF statistics shows that people held on suspicion of attempted murder and human trafficking in Kathmandu district are more vulnerable to torture and ill-treatment. It is reported that seven (100%) people held on the charge of attempted murder claimed that they were tortured.
3. When analysing torture trends of Sunsari district based on charges, it has been found that people detained on drug charges (50%) and theft (50%) are at the greatest risk of being tortured.
4. Cases in which the Chief District Officer (CDO) has the jurisdiction to initiate and adjudicate proceedings under Nepal's Public Offence (and Punishment) Act 1970 tend to have higher incidents of torture. During this period, AF visited 168 such detainees. Among them, 61 (36.3%) claimed that they were subjected to torture and ill-treatment whereas 177 of the 1,015 (17.4%) others whose cases were handled by the District Courts claimed that they were subjected to torture.
5. Fifty three detainees were arrested under the Forest Act 1993 and detained by forestry department officers. Of those, 15 (28.3%) detainees claimed that they were tortured ill-treated.

### VULNERABLE GROUP

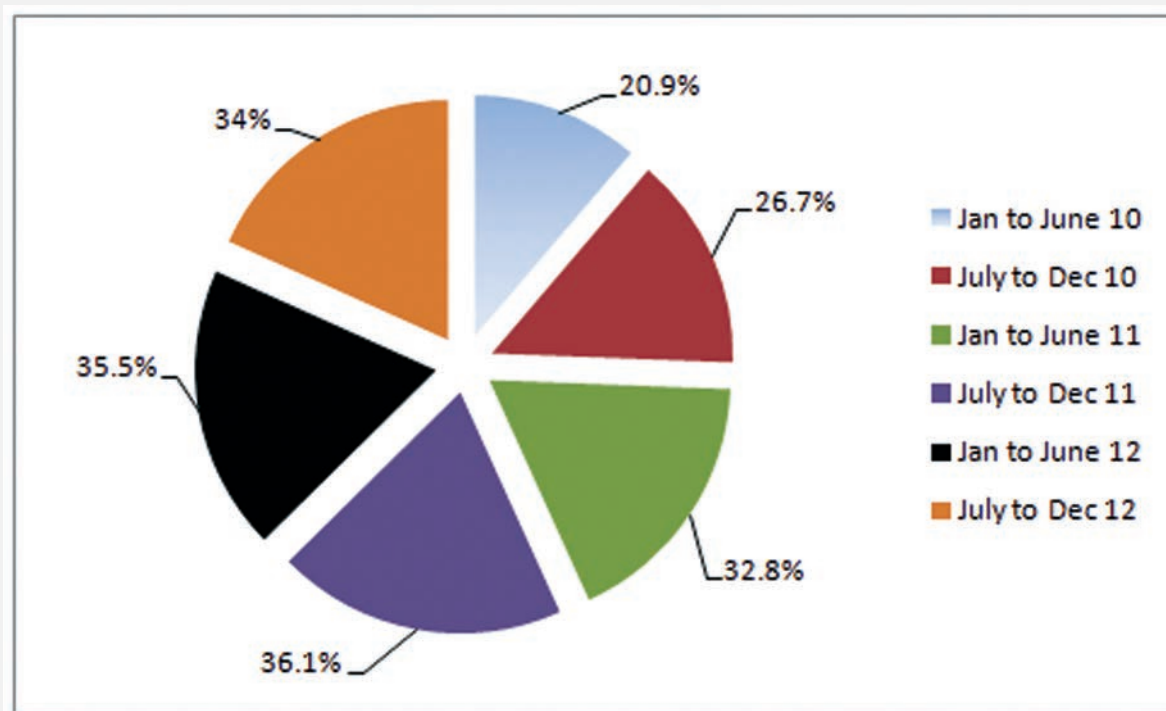
#### **Condition of juvenile delinquents in detention: trends and patterns of torture and other ill-treatment**

According to the data gathered, juveniles in Nepal are at a high risk of being tortured, intimidated, and having their special needs disregarded. The present briefing highlights the patterns and trends of torture and other ill-treatment of juveniles in conflict with the law and traces Nepal's justice system as it pertains to them, its level of implementation and identifies problematic or weak areas in the domestic laws concerning juveniles.

Overwhelmingly, cases documented by AF concerning juveniles who are in conflict with the law suggest the following: 1) juveniles are immediately placed in police detention; 2) juveniles are generally not separated from adult detainees; 3) juveniles are mentally and physically tortured until they confess to criminal activity and 4) juveniles lack access to fair legal procedures. The graph below shows torture percentage of juveniles since the beginning of 2010:

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### Torture trends among juveniles



Out of 474 juveniles<sup>12</sup> interviewed in various detention facilities during this reporting period, 161 (34%) reported that they were tortured or ill-treated. Among the 474 interviewed, 31 (6.5%) were girls, and the remaining 443 (93.5%) were boys. This shows a slight decline in torture (1.5%) in comparison to the previous months. The large majority of juveniles tortured were boys, with only two out of the 31 girls reporting torture.

The gradual increase in torture of juveniles since 2010 is concerning given the consistent advocacy by AF and other groups regarding the prevention of torture of juveniles in custody. The percentage of juveniles tortured remains higher than the percentage of the overall population of detainees. In other words, police torture juveniles more frequently than adults.

When examining the correlation between torture and charges, most of the juveniles who claimed they were tortured were arrested on the charge of public offense or were young people against whom in the end no charges were brought. Few juveniles are arrested on suspicion of theft, drug possession and murder. Generally, juveniles are most vulnerable to torture, threats and intimidation, and as soon as the police arrest them they are most likely to be slapped, beaten and/or verbally abused.

Juveniles remain the most vulnerable group, facing the highest risk of physical and mental abuse in police detention. This is aggravated by regular denial of access to lawyers. AF has recorded cases where juveniles were refused access to lawyers who could represent their cases for litigation. In one such instance in Kaski district a 13-year-old juvenile arrested on suspicion of theft was denied access to AF lawyers. Only after AF lawyers repeatedly visited the police station, including the complaints' desk, they were finally given access. In the end, the police released the boy into AF's custody.

The following chart is the age-wise breakdown of juveniles claiming torture and ill-treatment:

<sup>12</sup> Defined as persons under the age of 18.

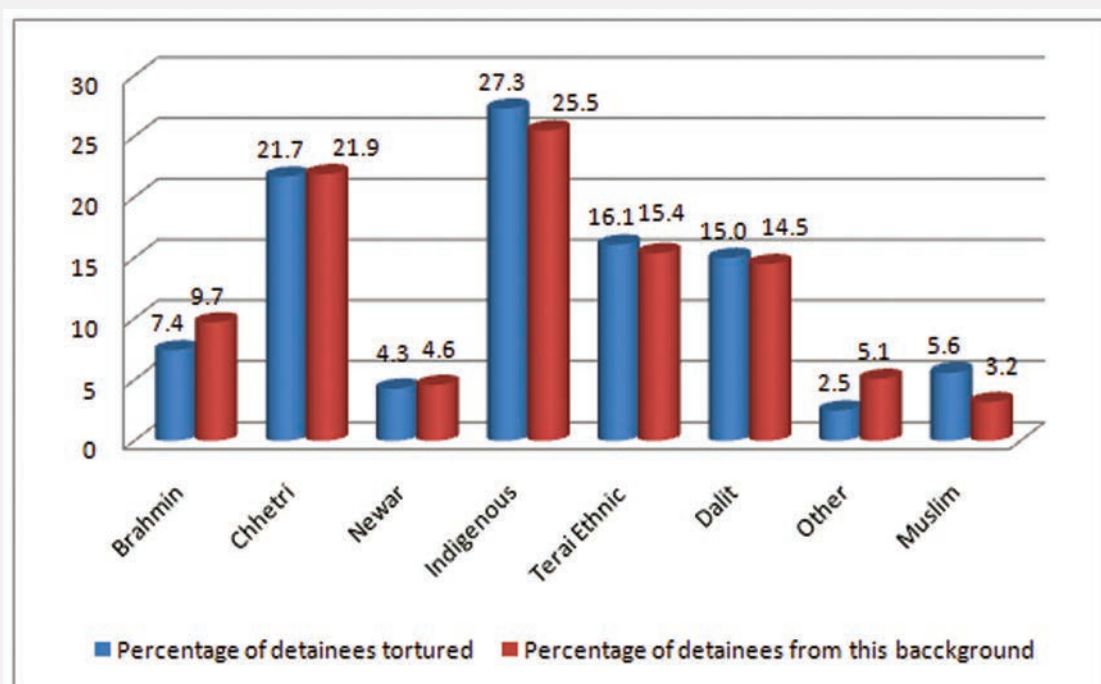
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### Age \* Torture and CIDT information

			Torture and CIDT information		Total
			Yes	No	
<b>Age</b>	10	Number	2	1	3
		% within Age	66.7%	33.3%	100.0%
	11	Number	0	1	1
		% within Age	0.0%	100.0%	100.0%
	12	Number	5	3	8
		% within Age	62.5%	37.5%	100.0%
	13	Number	9	8	17
		% within Age	52.9%	47.1%	100.0%
	14	Number	12	28	40
		% within Age	30.0%	70.0%	100.0%
	15	Number	36	44	80
		% within Age	45.0%	55.0%	100.0%
	16	Number	36	44	80
		% within Age	45.0%	55.0%	100.0%
	17	Number	32	84	116
		% within Age	27.6%	72.4%	100.0%
	18	Number	29	100	129
		% within Age	22.5%	77.5%	100.0%
<b>Total</b>		<b>Number</b>	<b>161</b>	<b>313</b>	<b>474</b>
		<b>% within Age</b>	<b>34.0%</b>	<b>66.0%</b>	<b>100.0%</b>

Below is a chart showing a breakdown of juveniles claiming they were tortured or ill-treated by caste and ethnic grouping. The analysis shows that as among adults, the juveniles belonging to disadvantaged groups are more likely to be tortured.

### Caste-wise analysis of torture of juvenile detainees





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Juveniles from a Muslim background are more likely to be tortured or ill-treated. This category represents 3.2% of juvenile detainees overall, but 5.6% of those claiming they were tortured. Juveniles from indigenous communities constitute 25.5% of detainees, but 27.3% of those claiming they were tortured. The Terai group comprises 15.4% of juvenile detainees overall, but forms 16.1% of those claiming they were tortured. In the case of the Dalit group, this category constitutes 14.5% of juvenile detainees overall, but 15% among those claiming that they were subjected to torture.

### DISTRICT-WISE ANALYSIS OF TORTURE OR ILL-TREATMENT OF JUVENILE DETAINEES

During this period, the districts with very high percentage of juveniles claiming torture or ill-treatment are as follows: Bardiya (68.8%), Ramechhap (66.7%), Kathmandu (57.6%), Jhapa (43.5%) and Dhanusha (41.7%). Whereas the following four districts reported a 100% absence of torture: Lalitpur, Parbat, Dolakha and Sunsari.

During the previous period from January to June 2012 during a district-wise analysis, three districts reported a 100% absence of torture: Surkhet, Lalitpur and Dolakha. During the previous period, the following districts had a very high percentage of juveniles claiming torture: Kaski (66.3%), Jhapa (56%), Udayapur (50%) and Dhanusha (41.7%).

### PROCEDURAL SAFEGUARDS FOR JUVENILE IN CONFLICT WITH THE LAW

Nepal is currently ignoring both international and national laws, which serve to protect the rights of juveniles while in custody. For example, the Convention on the Rights of the Child (CRC), which was ratified by Nepal in 1990, specifically addresses the necessary rights which must be afforded to juveniles when they come into conflict with the law. The CRC expressly recognises that State parties must ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>13</sup> Moreover, the Children's Act 1991 (2048) of Nepal also contains provisions that safeguard the rights of juveniles and provides an array of provisions protecting juveniles in conflict with the law, including their separation from adults. However, overwhelmingly police practice remains to keep juveniles in detention with adults. Detention in Nepal is usually a first resort, not a last.

Besides, judges can also play a very crucial role in preventing juveniles from being tortured or ill-treated. It is realised that the trend of asking juveniles about torture or ill-treatment while they are brought before the court for remand helps to reduce torture on juveniles. Despite this fact data collected from AF working districts show that in a majority of cases districts judges do not ask juveniles whether they were tortured. In Udayapur district 95.8% of juveniles told that they were not asked about torture or ill-treatment by judges while they were brought to the court for remand. Worse is the case in Dhanusha where out of 52 all juveniles (100%) told that they were not asked about torture during remand. This indicates a worrying trend developed in judicial sector of Nepal. Similarly, the high percentages of juveniles claiming they were not asked about torture in districts like Kaski (85.1%), Surkhet (84.4%), Lalitpur (95.5%), Rupandehi (82%) and Baglung (81.3%) also reveal the insensitivity of the judiciary in protecting juvenile delinquents from torture or other sort of ill-treatment. Some districts, however, have complied with this safeguard, but again compared to those districts mentioned above

<sup>13</sup> See Convention on the Rights of the Child (CRC), article 37. Article 37(b) of the CRC declares that no child shall be deprived of his or her liberty unlawfully, and that arrest, detention and imprisonment shall be used only as a measure of last resort and for the shortest appropriate period of time.

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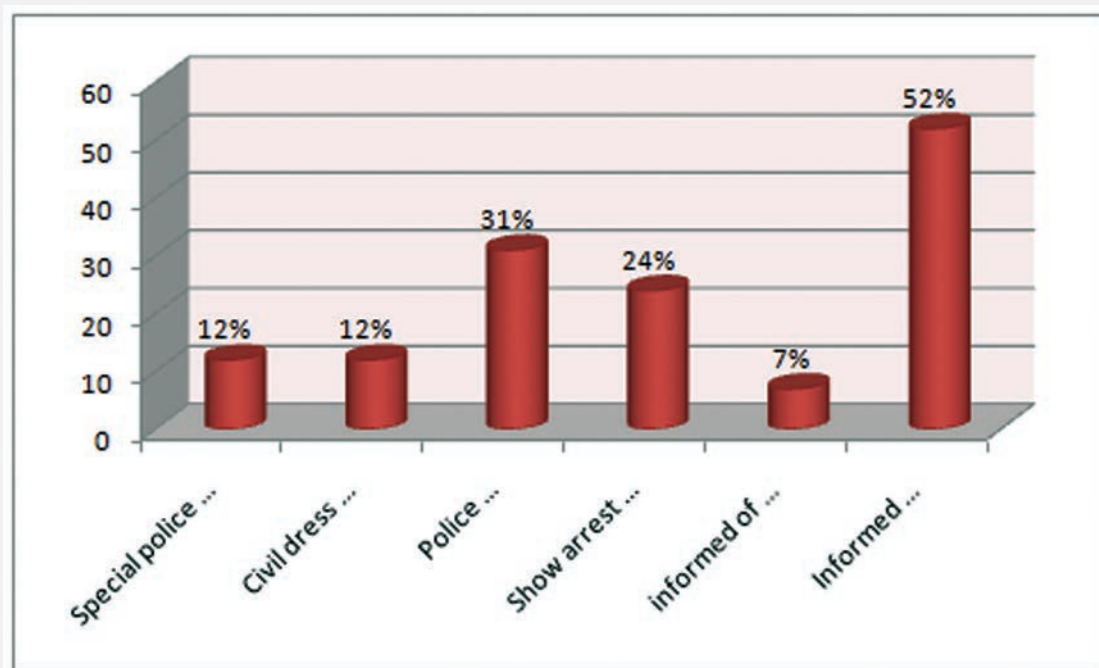
the data seems too insignificant. Only 50.7% of juveniles in Kathmandu district said that they were asked about torture or other ill-treatment by the judges. Some other districts like Kanchapur (40.9%) and Kapilbastu (38.5%) have comparatively high figures. (See a detailed list in Annex 1, Table 13)

The treatment of juveniles in detention is governed by the Juvenile Justice (Procedure) Regulations 2006 (2063). The Regulations contain provisions relating to investigation and interrogation, and are intended to minimize the frequency of torture of juveniles while in police custody.

### IMPLEMENTATION OF JUVENILE JUSTICE (PROCEDURE) REGULATION 2006 (2063)

The Juvenile Justice (Procedure) Regulation provides for an array of procedural safeguards to children in conflict with the law. The three separate graphs below outline the implementation statuses of the Rules during and after arrest (investigation and interrogation dichotomy) and also during the court proceedings.

#### *Juvenile Justice (Procedure) Regulations Implementation Status (During Arrest)*



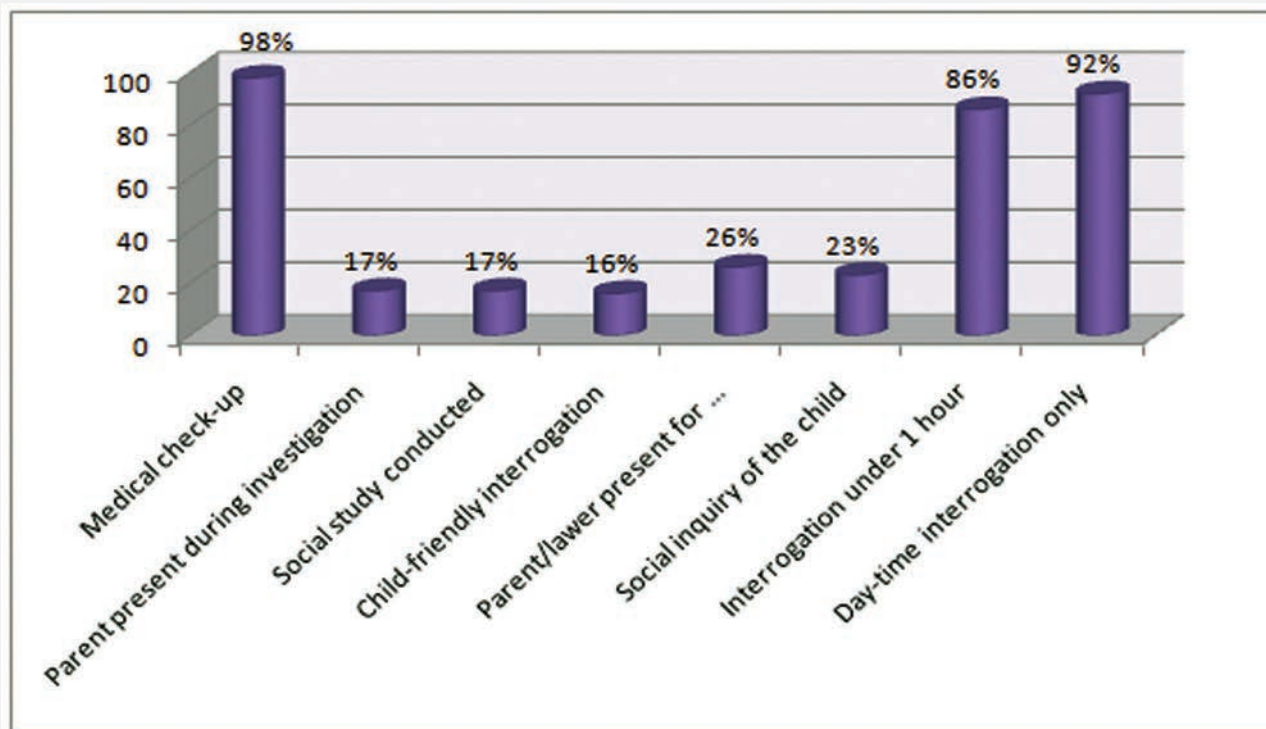
### IMPLEMENTATION STATUS OF RULE 4 OF JJR

Rule 4(d) of the Juvenile Justice (Procedure) Regulation provides for a legal obligation to investigating officer who is required to inform a parent or guardian about the juvenile's offense. This Rule seems to have been well complied with by the police. In 52% of such cases police have informed parents of the crimes committed by the juvenile. While this presents quite an optimistic overview of the implementation of the Regulations there is also a very less compliance of other safeguards by the police. Very few (roughly 7%) juveniles are informed about their legal and constitutional rights as provided in Rule 4(c) during the arrest. Similarly, investigation of

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juveniles by police wearing uniform is also a very common trend and is in a serious breach of Rule 4(a) of the Regulations.

### Juvenile Justice (Procedure) Regulations Implementation Status (After Arrest)

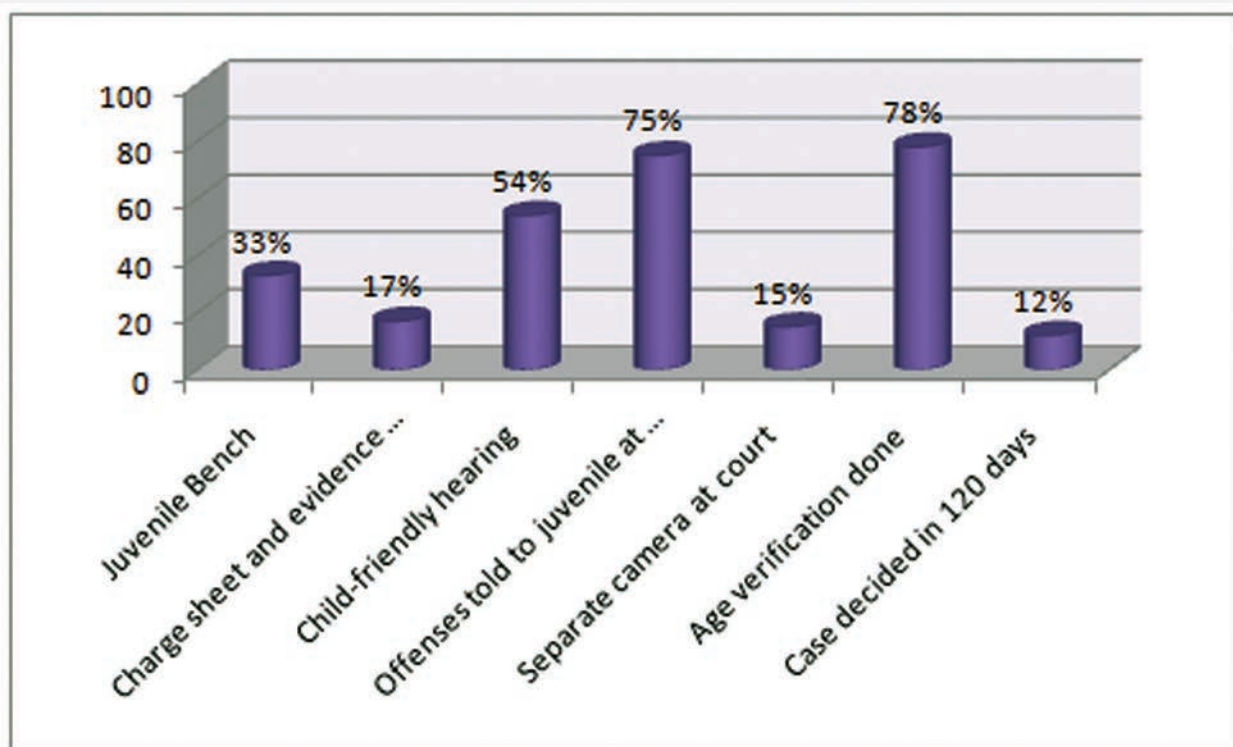


### IMPLEMENTATION STATUS OF RULE 5 OF JJR

The Regulations set forth some certain provisions relating to interrogation in Rule 5 that are to be followed after arresting juveniles. Provisions, like interrogating juveniles in juvenile-friendly environment in presence of parent, guardian, or lawyer, familial or social enquiry, and investigation for no longer than one hour are crucial to this Rule. According to the graph almost every juvenile (98%) is sent for medical check-up after he/she is arrested. The implementation of Rule 5(4) is also positively met as 86% of juvenile aren't interrogated for more than one hour whereas 92% are interrogated only during the day time. These are positive practices, for it reduces fear and intimidation among juveniles while at detention. Apart from these there remained wide inconsistencies with regard to other practices of the Regulation. Although regarded a basic requirement of interrogation, only in 16% of cases juveniles were interrogated in child-friendly environment. Furthermore, the requirement to interrogate juveniles in the presence of parents, guardian or a lawyer is also not consistently followed in all districts. Only 26% of juveniles were interrogated in such a manner.

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### Juvenile Justice (Procedure) Regulations Implementation Status (Court Proceedings)



### IMPLEMENTATION STATUS COURT PROCEEDINGS

The implementation of the Regulation at the judicial level also seems to be very appalling. It is reported that only 33% of district courts have juvenile bench. In a majority of cases juvenile bench was not established which means children in conflict with the law are exposed to various risk at trial. Similarly, only in 17% of cases charge sheet and written evidence was given to the parent or guardian of the juvenile. The non-implementation of this provision is a serious breach of Rule 7 of the Regulation. 75% juveniles were told about their offences at trial and 78% of juveniles' age verification was done. However, only 12% cases decided within 120 days means that the vast majority of juveniles are vulnerable to risk and other form of ill-treatment.

In order to determine whether the pre-trial rights of juveniles are being upheld, AF regularly conducts interviews with juveniles in detention. This information is gathered through a standard checklist, which allows AF to systematically assess whether stakeholders in the criminal justice system are implementing the law, more specifically the Juvenile Justice (Procedure) Regulations 2006 (2063). Currently, the Regulations differentiate between **investigation** (Rule 4), and **interrogation** (Rule 5). The requirements pertaining to interrogation are weak, which has led to poor implementation status of these rules.

The following failures in the implementation of these laws have been recorded by AF:

#### Rule 3

The failure to have a separate police officer or unit assigned to the investigation of juvenile offences pursuant to Rule 3 to ensure that juveniles are only subjected to investigation methods that are child-friendly. AF interviews

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suggest this is rarely the case: only two (Jhapa and Kanchanpur) out of 20 districts have these special units in place.

### **Rule 4(a)**

The failure to wear civilian dress when interviewing juveniles was included in the Rules in order to minimize intimidation and fear. According to AF's interviews, this provision was almost never complied with.

### **Rule 4(b)**

AF has found that about two out of three (31%) of police officers fail to identify themselves as police using proper documentation at the time of arrest, in contravention of Rule 4(b).

### **Rule 4(b)**

The failure to provide the juvenile with a reason for his/her arrest. Based on AF's interviews, approximately one out of five juveniles is notified of the reason for his or her arrest. It was found that only Banke district has a consistent practice of verbally informing the juvenile of the charge.

### **Rule 4(c)**

Police should inform the juvenile of his/her legal and constitutional rights in a language that is understood by him/her under Rule 4(c). According to AF's findings, the child was informed accordingly in merely four out of 52 documented cases. This shows a vast communication problem which leaves the juveniles unprotected during investigation. One reason for this failure may be that the police themselves are not fully aware of the rights of the child, and are therefore failing to inform the juvenile.

### **Rule 4(d)**

One requirement which is fairly well implemented is Rule 4(d), which requires a police officer to inform a parent or guardian about the juvenile's offense. This Rule was positively complied with in almost every district other than Kaski and Kapilvastu. However, AF case studies suggest that police would inform the parents of the juvenile only after a period of initial interrogation.

### **Rule 4(e)**

One positive aspect was guaranteeing the rights of the child to a physical and mental check-up, which occurred in almost all of AF's documented cases. However, there is often a focus on physical check-ups, and the mental state of the juvenile may often be disregarded.

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### **Rule 5(1)**

Another weak area is conducting interrogation in a child-friendly environment, pursuant to Rule 5(1), which is reported to occur in around 16% of cases only.

### **Rule 5(2)**

The Juvenile Justice (Procedure) Regulation Rule 5(2) provides children the right to have their parents present during all stages of the investigation. The failure of the police to contact parents means that juveniles are more likely to become victims of torture and degrading treatment, as they do not know their legal rights and are not likely to demand just treatment in the face of police power.

Currently, Rule 5(2) only stipulates that the interrogation of a juvenile may be done in the presence of the juvenile's parents, guardian or lawyer. Therefore, there is no legal obligation that the child must have a parent or lawyer present in the room. AF finds in all districts that parents are not often present during interrogation. It is the view of AF that having a parent or lawyer during interrogation should be mandatory, in an attempt to minimize the mistreatment of juveniles in detention. Currently, the weak implementation of this requirement is not adequately protecting juveniles.

### **Rule 5(4)**

Another area which is well implemented is the obligation of the police not to interrogate juveniles for periods longer than one hour. Data collected from districts reveal that the majority of juveniles reported that this requirement was observed. Furthermore, the requirement not to interrogate juveniles at night was also consistently met.

### **Rule 6**

AF's research suggests that the implementation of the regulations is also failing at a judicial level. Rule 6 of the Regulation, which requires the formation of a Juvenile Bench with the involvement of a social worker, child expert or psychologist along with a judge within the district court is weakly implemented. In the majority of cases, such a bench has not been formed, and therefore the best interests of the child are not properly being addressed at a judicial level. It is clear from the research that a concerted effort is being made to use language appropriate to the child's age, and to inform the juvenile of the offenses and evidence formed against him or her. Although these requirements are not always met, the research suggests that progress is being made in this regard.

### **Rule 6(1)**

The courts fail to implement the law of hearing juvenile cases on special juvenile benches and ignore to clarify whether the statements of juveniles were taken following the rule set out in the Juvenile Justice (Procedure) Regulations and fail to verify the procedure adopted while taking their statement.

### Rule 7(1)

Furthermore, the requirement that the juvenile's parents must be given a copy of the charge sheet and written evidence is also being ignored. According to AF's interviews, this requirement (Rule 7[1]) was only ever met consistently in the Banke district, where the information was most commonly provided to the juvenile's lawyer. This requirement was systematically ignored in all other districts.

### Rule 16

The criminal justice system fails to uphold Rule 16 which requires that a juvenile's case is decided within 120 days from the day the case is filed. In the majority of recorded instances, the cases were on-going beyond 120 days or had been decided after more than 102 days. This raises deep concerns about exposing juveniles to protracted legal proceedings, and the danger to the welfare of the juvenile if they are kept in detention while the case is on-going.

## THE IMPACT OF AF'S CONSULTATION MEETINGS ON JUVENILE JUSTICE REGULATIONS (JJR)

A common theme amongst all consultation meetings organised by AF was the issue of police torture of detainees and the impunity offered to these offenders, which is rife throughout the criminal justice system.

AF organised consultation meetings in 16 districts across Nepal in December 2012. The title of this round of consultation meetings was "**Juvenile Justice Procedures Regulations: Status of Implementation**". These consultation meetings were attended by many key stakeholders within the criminal justice system, including police, public prosecutors and defence lawyers. Representatives from NGOs working in the field of juvenile justice also attended the meetings.

AF's consultation highlighted the importance of juvenile justice procedural guidelines and demanded that juveniles in detention receive the basic procedural safeguards entitled to all people in detention, such as the presumption of innocence, the right to be notified of the charge, the right to remain silent, the right to counsel and the right to the presence of a parent or guardian during questioning from the stakeholders.

Juveniles are more vulnerable to the deprivation of these rights due to their limited knowledge of these rights and their ability to demand them. One particular concern stressed by participants at the consultations is the lack of adherence to children's right to have their parent or guardian involved at all stages of proceedings.<sup>14</sup>

Issues on accountability relating to the crime of torture on juveniles and a strict implementation of the Juvenile Justice Regulations were also central themes during the consultations. The stakeholders, particularly the participants representing the police administration and the judiciary, made commitments to establishing mechanisms preventing torture and ill-treatment and introduce a culture of clearly asking juveniles if they had been tortured. The consultations also placed an emphasis on the glaring need to establish rehabilitation programs for juveniles, as well as adequate diversionary programs when juveniles first commit crimes.

<sup>14</sup> Rule 15.1 of the "Beijing Rules": United Nations Standard Minimum Rules for the administration of juvenile justice <http://www.un.org/documents/ga/res/40/a40r033.htm>

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### Case Study: (Torture of a 18-year-old student)

Dipen Limbu, an 18 year old 10<sup>th</sup> grader, a resident of Sanischare VDC-7, Naya Buspark, Jhapa district was arrested by police on 20 July 2012 under the allegation of extortion. He was allegedly tortured during his arrest and detention. Illegally detained for two days, he was neither provided with an arrest warrant nor a detention letter.

At around 7 pm ASI Ram Kumar Sherpa and two other policemen, who had come there in civil dress, arrested Limbu from 'Hotel Hungry Boy' where he was playing games in his mobile phone. Before taking him to the APO Birtamod, Sherpa took him inside the hotel and all of them started beating him accusing him of extorting money from a businessman. Despite contending the allegation they continued kicking and punching him on his body and face. He was also beaten with a stick many times in his body. He was also beaten up in the van while in transit. On the same day he was taken to Kankai Hospital for medical check-up where the doctor asked him whether or not he had consumed alcohol and did not ask anything about the visible marks of torture in his body. The police then brought him back to the APO where he was detained for two days. On 22 July at around 9 am the police released him without any charge.

### METHOD OF TORTURE

There are many reoccurring trends amongst the methods of torture used by police officers. The most common patterns of torture in terms of methods of torture are as follows:

1. Using sticks and pipes to beat the soles of a detainee's feet. One of the most persistent issues reported by detainees was an inability to walk or pain in the feet for many weeks after detention. One victim reported a case so severe that he was unable to walk to the bathroom for 5 days after detention. This method of torture appears to be systemic amongst police interrogation methods.
2. Physically beating the face and other parts of the body by kicking, punching and slapping. The most drastic cases reported that some detainees lost consciousness and experienced blood loss. Many detainees reported difficulty sitting, standing and eating for long periods of time after detention. One victim reported that he had significant hearing loss in both ears after being subjected to multiple blows to the head.
3. Inserting a rod between the knees and elbows of the victims, so that they were painfully left hanging in the air for long periods of time. This was often done while the victims were blindfolded. Other reports alleged that police hung victims upside down and made them do shoulder stands for long stretches of time. In one of such cases a victim was tortured for almost two hours while he was hung upside down. (*see case summary below*)



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4. Making threats of death. There were reports of police using the barrel of their guns to intimidate victims, by placing them in the victims' mouths and against their heads.

In many cases, the victims of torture reported that they confessed to crimes they had not committed so that the torture would stop. The victims noted that often the torture resulted in such intolerable pain that they would have admitted to anything. In many of these cases, the victims were found to be innocent of the crimes after further police investigation.

### Case Study: Appalling Methods of Torture

Khimlal Rijal, 22, a permanent resident of Pwang VDC-6, Rukum district, Nepal was arrested by policemen dispatched from District Police Office, Kaski on 9 September 2012 on suspicion of snatching a gold chain from a woman. Despite confessing to the crime, the police continued to torture him while interrogating him about his involvement in other theft cases. He was beaten and punched in the face and kicked on other parts of his body and thrashed with a plastic pipe on his thigh, back and the soles of his feet. He was also forced to lie down on a table while the police rolled a three-meter thick long iron rod on his thigh with one policeman holding him down while two others were rolling the rod from both ends. On the second day in the morning, he was again tortured. This time the police handcuffed both his hands and made him bend his knee. They inserted a thick stick between the knees and the two policemen lifted him from the two ends of the stick and hung him upside down and started beating him with plastic pipes.

### SAFEGUARDS

The Interim Constitution, 2007 and the Torture Compensation Act (TCA) provide some safeguards against torture at the hands of state actors like the Nepal Police. In general and by AF's observations, the Nepal Police and other state authorities fail to systematically abide by these provisions, though there are some improvements in relation to certain safeguards such as judges asking about torture from detainees brought before them.

As is demonstrated by the figures in Table 7 in Annex 1, the police are not abiding by the requirement to provide arrest warrant at the time of arrest. Of 1,871 detainees, 168 (9.0%) received arrest warrant at the time of arrest; whereas 1,386 (74.1%) received arrest warrant after they were brought into detention. This compares to the previous period January to June 2012 where 201 (10.6%) received arrest warrants at the time of arrest and 1,409 (74.2%) received arrest warrant only after they were brought into detention. During this period, 1,503 (80.2%) received a detention letter whereas 370 (19.8%) did not get detention letter while they were in custody. This compares 1541 (81.1%) of detainees were provided with detention letters and 359 (18.9%) did not get one during the period from January to June 2012. A further analysis has shown that the police often provide the charge/detention letter two or three days after the arrest with a falsified date of arrest.

The police have also failed to take detainees to court or to the District Administration Office (DAO) for remand within 24 hours as per Article 24 (3) of the Interim Constitution. During this period, 951 (58.0%) detainees

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visited by AF had been taken to the courts for remand within 24 hours. Among the detainees who had been taken to court (whether within 24 hours or later), 344(21%) detainees stated that they were asked by the judges about torture or other ill-treatment whereas 1,296 (79.0%) stated that the judges failed to ask about torture or other ill-treatment.<sup>15</sup> This represents a sharp increase of 5% compared to the previous period when 16% of detainees brought before the court said that they were asked whether they had been tortured. It presents an even more significant improvement in comparison to, for instance, the period of April to June 2009, when only 6.3% of judges asked about torture.

Major problems remain with regard to the critical issue of health check-ups which according to the TCA have to be done at the time detainees are taken into custody and before they are released from custody. The percentage of detainees taken for check-up has increased compared to the previous quarter (see Table 9). During this period, 1,777 detainees (94.9%) stated that they were provided with health check-ups in the early part of their detention in comparison with 94.8% during the previous period from January to June 2012. However, according to the detainees, health check-ups are dealt with as a formality by both doctors and police who routinely take detainees in groups to see a doctor; and doctors simply ask the detainees (often in the presence of the police) whether they have any injuries or internal wounds, but fail to physically examine them. Often doctors merely checked detainees' alcohol consumption (*see the case study above*). Detainees were often scared to mention their injuries because they feared police reprisal. In the rare cases when victims were taken to the doctor and given treatment for torture injuries, the victims had to pay the doctors' fees.

When victims claim before the court that they were tortured and when courts give orders to the police to take the victims for physical and mental examination, it is noted that at that time too in many cases the doctor fails to conduct a proper examination. The doctors also often fail to give adequate description of any wounds in the medical report to be submitted to the court, and to give adequate prescription of medicines for treatment of the wounds.

AF filed a Public Interest Litigation (PIL) petition on 6 April 2010 (Writ No W 0043) to challenge the quasi-judicial powers of Chief District Officers (CDOs). The petition argued that provisions in no less than 10 laws granting powers to CDOs are in breach of Nepal's commitments under international human rights law to which it is a party, more specifically in breach of Article 14 of the International Covenant on Civil and Political Rights, guaranteeing a right to a fair trial before an independent tribunal. On 22 September 2011, the Supreme Court ordered the government to look into the semi-judicial powers vested in CDOs and other administrative officers finding the current provisions allowing CDOs with wide-formulated judicial powers were in breach of the constitution. The court ordered the government to study what kind of cases should be given to administrative officers and what cases should be given to specialised courts or tribunals. It also asked the government to set up criteria in line with the constitution to allow administrative officers to work efficiently. The court also ordered the formation of a study team that would recommend necessary changes in this regard within six months.<sup>16</sup>

Following the Supreme Court order in September 2011, the government in May 2012 formed a four-member team to recommend necessary changes in the semi-judicial authority of the Chief District Officer (CDO) and other administrative officers. The four-member team comprises former secretaries Govinda Kusum, Madhav Poudel and Mohan Banjade and is coordinated by Secretary at the Prime Minister's Office Trilochan Upreti.

<sup>15</sup> See Annex 1: Table 13 for details.

<sup>16</sup> See <http://www.ekantipur.com/the-kathmandu-post/2011/09/22/nation/apex-court-for-review-of-cdo-powers/226594.html>

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According to Govinda Kusum, the team is studying 25 different Acts concerning the quasi-judicial authority of CDO.<sup>17</sup>

According to sources at the Office of the Attorney General, the government has been imparting training to CDOs to enhance their capacity to adjudicate cases, pending a change in relevant legislation. The objective of the training is to enhance the capacity of CDOs by providing theoretical and practical knowledge and skills for carrying out activities related to law and justice. Initially, the Judicial Service Training Centre provided two three-month long trainings. In February 2013, the National Judicial Academy took over responsibility. In June 2012, there were 30 participants from different districts taking this training.

### STATE RESPONSES TO REPORTS OF TORTURE

#### **Communications to concerned agencies (Human Rights Units of the Nepal Police and Armed Police Force, the NHRC and the Attorney General's Office)**

AF for many years now has conducted meetings with the Human Rights Unit of the Nepal Police, the NHRC and Attorney General's Office to update them about the situation of torture in detention centres and share findings of its activities. It has also raised numerous cases of torture with them; seeking their intervention to prevent further torture and investigate reports. However, over the last two years, none of these agencies have provided written responses to AF updating on any progress made in their internal investigations.

During this period, AF submitted six cases to the Human Rights Unit of the Nepal Police, the NHRC and Attorney General's Office at the national level seeking an impartial investigation into reports of torture, protection for the victims from reprisal and action against the alleged perpetrators. (For more details, see Annex 2) No responses were received.

### LITIGATION

During the armed conflict, many people were found tortured and ill-treated by state and non-state actors. Due to the uncertain environment and fear for their lives, people did not file cases under the TCA against perpetrators who tortured them. Many of these victims still suffer from the physical and mental impact. Since its establishment, AF has assisted victims with the filing of cases seeking compensation under the TCA. However since the Act requires victims to file complaints within 35 days of the torture or of their release, many of the victims of torture have been denied access to justice. Additionally, these victims are unable to file FIRs because torture is not listed as a crime in the annex to the State Cases Act and there is no other enabling legislation.

AF has repeatedly documented the shortcomings in the TCA as a law and how it is being implemented.<sup>18</sup> One of the main implementation issues is the slow nature of proceedings. Section 6 of the TCA provides that TCA cases fall under the purview of the Summary Procedure Act, 1972. A respondent in a TCA case has a maximum of 14 days to submit a response after receiving a complaint from the court. Section 10 of the Summary Procedure Act provides that once the respondent submits a response, the case must be decided within 90 days. Section 8 of the Summary Procedure Act provides that either party can request the postponement of a case twice, for

<sup>17</sup> See <http://www.ekantipur.com/2012/07/16/capital/govt-forms-team-to-redefine-cdos-semi-judicial-authority/357216.html>

<sup>18</sup> See AF's researched report 'Hope and Frustration: Assessing the Impact of Nepal's Torture Compensation Act-1996' for thorough analysis of TCA. The report can be accessed at <http://advocacyforum.org/downloads/pdf/publications/june26-report-english-2008.pdf>

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a maximum of 15 days each time. Therefore, no TCA case should be delayed for longer than six months. In practice, however, TCA cases are often postponed for much longer periods of time.

During this reporting period, AF assisted four people in filing cases under the TCA: one from Jhapa, one from Kathmandu, one from Sindhupalchowk and one from Morang.<sup>19</sup>

During this period, there were two cases under the TCA where compensation was awarded.<sup>20</sup> Both cases were from Kathmandu filed under the TCA on 18 September 2009 and 12 March 2010 respectively. In these cases, the District Court of Kathmandu issued an order to provide NRs. 30,000/- (thirty thousand) and Rs. 10,000/- (Ten thousand only) as torture compensation to a torture victim. These decisions were made on 9 July 2012.

While the TCA allows for the court to order departmental action against the perpetrator of torture, no departmental action was ordered during this reporting period. Courts only in very rare occasions order departmental action against the perpetrators. Out of 120 cases filed by AF under the TCA, 31 cases have been decided by the courts out of which only in 14 cases departmental action was ordered. Again, due to a lack of mechanism overseeing the compliance of such court orders victims rarely know whether action is taken against the perpetrators as per the decision of the court.

While the TCA is the only legal recourse available in Nepal through which victims of torture can file cases against perpetrators demanding compensation and departmental action. This is, however, not easy for the victims to do without feeling fear and intimidation. In many instances, AF has found an environment of threats surrounding the victims who file cases under the TCA. The case of Ram Biraji Devi Mukhiya, a woman torture survivor serves as an example to this. She was arrested by Assistant Sub-Inspector of Police (ASI) Dev Kumar Raut on 8 March 2012 without any specific charge and tortured and ill-treated at the APO Chorkoila, Dhanusha district. On 22 March 2012 the victim had filed a case against the ASI under the TCA demanding compensation and departmental action against him. After that, she and her family were under constant threat and intimidation by the ASI, who demanded immediate withdrawal of the case against him. On 16 June 2012 at around 12:30 pm, her husband Dev Lal Mukhiya was abducted from Kathmandu by a gang threatening him to ensure his wife withdrew the case against the ASI. The case is pending before the Dhanusha district court.

<sup>19</sup> See Annex 3 for details.

<sup>20</sup> See Annex 4 for details.

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### ANNEX 1: DATA ANALYSIS FOR JULY TO DECEMBER 2012

**Table 1: Numbers of detainees by sex**

	Frequency	Percent
Female	204	10.9
Male	1666	88.9
Other	3	0.2
<b>Total</b>	<b>1873</b>	<b>100.0</b>

**Table 2: Torture reported**

		Frequency	Percent
<b>Valid</b>	Yes	385	20.6
	No	1488	79.4
	<b>Total</b>	<b>1873</b>	<b>100</b>

**Table 3: Gender and torture and CIDT reports**

			Torture and CIDT		Total
			Yes	No	
<b>Gender</b>	Female	Number	23	181	204
		% within Gender	11.3%	88.7%	100.0%
	Male	Number	361	1305	1666
		% within Gender	21.7%	78.3%	100.0%
	Other	Number	1	2	3
		% within Gender	33.3%	66.7%	100.0%
<b>Total</b>		<b>Number</b>	<b>385</b>	<b>1488</b>	<b>1873</b>
		<b>% within Gender.</b>	<b>20.6%</b>	<b>79.4%</b>	<b>100.0%</b>

**Table 4: District-wise percentages of torture**

District			Jan - June 2011	July to Dec 2011	January to June 2012	July to December 2012
1.	Kathmandu	Number	156	85	66	90
		% within Detention Place	24.6	24.1	33.7	39.3
2.	Rupandehi	Number	27	26	28	35
		% within Detention Place	12.1	11.9	13.1	14.5
3.	Dhanusha	Number	25	13	12	10
		% within Detention Place	37.9	25.0	23.1	18.5
4.	Baglung	Number	13	23	23	29
		% within Detention Place	18.1	19.5	20.2	22.7
5.	Myagdi	Number	8	7	3	4
		% within Detention Place	16.3	22.6	9.7	8.3

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District			Jan - June 2011	July to Dec 2011	January to June 2012	July to December 2012
6.	Parbat	Number	1	17	8	1
		% within Detention Place	5.3	29.3	22.9	4
7.	Bardiya	Number	29	28	15	20
		% within Detention Place	38.2	35.9	31.2	26.7
8.	Morang	Number	19	10	19	13
		% within Detention Place	19.2	11.8	16.4	11.1
9.	Ramechhap	Number	11	4	6	8
		% within Detention Place	47.8	16.7	16.2	33.3
10.	Dolakha	Number	19	2	1	2
		% within Detention Place	21.3	3.4	1.4	2.5
11.	Jhapa	Number	12	12	39	25
		% within Detention Place	18.5	16.7	30.2	22.7
12.	Banke	Number	51	30	42	37
		% within Detention Place	37.8	27.3	28.8	33.9
13.	Kaski	Number	89	99	116	53
		% within Detention Place	35.3	51.6	52.0	23
14.	Kanchanpur	Number	3	0	2	2
		% within Detention Place	4.4	.0	1.4	2.1
15.	Udayapur	Number	19	19	5	13
		% within Detention Place	25.3	23.8	9.4	21.7
16.	Surkhet	Number	28	30	20	14
		% within Detention Place	30.4	26.3	30.8	17.9
17.	Kapilbastu	Number	11	12	15	9
		% within Detention Place	24.4	26.7	24.6	15.3
18.	Lalitpur	Number	4	8	0	1
		% within Detention Place	6.3	21.1	0.0	4.5
19.	Sunsari	Number	29	18	16	3
		% within Detention Place	50.9	42.9	31.4	37.5
20.	Siraha	Number	13	21	20	16
		% within Detention Place	20.6	29.6	25.3	19.8
<b>Total</b>		<b>Number</b>	<b>567</b>	<b>464</b>	<b>456</b>	<b>385</b>
		<b>% within Detention Place</b>	<b>25.0%</b>	<b>24.2</b>	<b>24</b>	<b>20.6</b>

**Table 5: Torture in relation to caste group**

Caste and Ethnicity	No. of detainees who were tortured	Percentage of detainees tortured	No. of detainees from this background	Percentage of detainees from this background
Brahmin Group	31	8	196	10.5
Chhetri Group	90	23.4	439	23.4
Newar group	15	3.9	77	4.1
Indigenous group	91	23.6	437	23.3
Terai Ethnic group	66	17.1	297	15.9
Dalit Group	48	12.5	220	11.7
Other Group	28	7.3	158	8.4
Muslim Group	16	4.2	49	2.6
<b>Total</b>	<b>385</b>	<b>100</b>	<b>1873</b>	<b>100</b>

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**Table 6: Torture inflicted in relation to charges**

			July to Dec 2011	January to June 2012	July to December 2012
<b>Charge</b>	Public Offence	Number	118	115	135
		% within Charge	22.3	22.4	24.2
	Attempted Murder	Number	29	18	19
		% within Charge	34.5	24	23.5
	No Charge	Number	64	72	55
		% within Charge	29.9	32.3	23.6
	Drug	Number	41	72	62
		% within Charge	12.9	20.4	18.2
	Rape	Number	26	15	14
		% within Charge	34.7	25.4	18.2
	Arms and Ammunition	Number	21	16	3
		% within Charge	46.7	48.5	23.1
	Theft	Number	77	57	48
		% within Charge	41.8	40.1	27.1
	Robbery	Number	3	8	2
		% within Charge	17.6	53.3	66.7
	Murder	Number	37	25	11
		% within Charge	33.6	16.4	9.5
	Attempted Rape	Number	0		0
		% within Charge	.0		0.0
	Forest Offence	Number	4	15	15
		% within Charge	5.9	20.5	28.3
	Gambling	Number	15	0	0
		% within Charge	20.3	0.0	0.0
	Human Trafficking	Number	5	3	1
		% within Charge	25	15	5.0
	Forgery	Number	0	7	1
		% within Charge	.0	25.9	6.2
	Traffic Murder	Number	3	0	0
		% within Charge	5.8	0.0	0.0
Kidnapping	Number	12	10	6	
	% within Charge	46.2	45.5	42.9	
Polygamy	Number	0	2	1	
	% within Charge	.0	6.2	2.3	

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**Table 7: Detention Place \* Reasons for arrest given**

*Detainee Place. \* Reasons for arrest given*

		Reasons for arrest given			Total	
		Yes	No	Given but after brought to detention		
<b>Detainee Place</b>	Kathmandu	Number	16	21	159	196
		% within Detainee Place	8.2%	10.7%	81.1%	100.0%
	Morang	Number	25	4	87	116
		% within Detainee Place	21.6%	3.4%	75.0%	100.0%
	Banke	Number	1	20	125	146
		% within Detainee Place	0.7%	13.7%	85.6%	100.0%
	Kaski	Number	12	91	120	223
		% within Detainee Place	5.4%	40.8%	53.8%	100.0%
	Kanchanpur	Number	2	10	135	147
		% within Detainee Place	1.4%	6.8%	91.8%	100.0%
	Udhayapur	Number	2	16	35	53
		% within Detainee Place	3.8%	30.2%	66.0%	100.0%
	Surkhet	Number	2	4	59	65
		% within Detainee Place	3.1%	6.2%	90.8%	100.0%
	Kapilbastu	Number	1	4	56	61
		% within Detainee Place	1.6%	6.6%	91.8%	100.0%
	Lalitpur	Number	12	3	16	31
		% within Detainee Place	38.7%	9.7%	51.6%	100.0%
	Rupendhai	Number	4	30	179	213
		% within Detainee Place	1.9%	14.1%	84.0%	100.0%
	Dhanusha	Number	0	1	51	52
		% within Detainee Place	0.0%	1.9%	98.1%	100.0%
	Baglung	Number	4	13	97	114
		% within Detainee Place	3.5%	11.4%	85.1%	100.0%
	Myagdi	Number	2	1	28	31
		% within Detainee Place	6.5%	3.2%	90.3%	100.0%
	Parbat	Number	2	12	21	35
		% within Detainee Place	5.7%	34.3%	60.0%	100.0%
	Bardiya	Number	7	16	25	48
		% within Detainee Place	14.6%	33.3%	52.1%	100.0%
	Ramechhap	Number	32	3	2	37
		% within Detainee Place	86.5%	8.1%	5.4%	100.0%
Dolakha	Number	41	2	30	73	
	% within Detainee Place	56.2%	2.7%	41.1%	100.0%	
Jhapa	Number	6	34	89	129	
	% within Detainee Place	4.7%	26.4%	69.0%	100.0%	
Sunsari	Number	1	5	45	51	
	% within Detainee Place	2.0%	9.8%	88.2%	100.0%	
Siraha	Number	29	0	50	79	
	% within Detainee Place	36.7%	0.0%	63.3%	100.0%	
<b>Total</b>		<b>Number</b>	<b>201</b>	<b>290</b>	<b>1409</b>	<b>1900</b>
		<b>% within Detainee Place</b>	<b>10.6%</b>	<b>15.3%</b>	<b>74.2%</b>	<b>100.0%</b>



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**Table 8: Taken before a judge within 24 hour?**

		Were you brought before a judge/ competent authority within 24 hours of detention?		Total	
		Yes	No		
<b>Detainee Place</b>	Kathmandu	Count	146	57	203
		% within Detainee Place	71.9%	28.1%	100.0%
	Morang	Count	62	55	117
		% within Detainee Place	53.0%	47.0%	100.0%
	Banke	Count	62	41	103
		% within Detainee Place	60.2%	39.8%	100.0%
	Kaski	Count	122	66	188
		% within Detainee Place	64.9%	35.1%	100.0%
	Kanchanpur	Count	76	17	93
		% within Detainee Place	81.7%	18.3%	100.0%
	Udhayapur	Count	15	33	48
		% within Detainee Place	31.2%	68.8%	100.0%
	Surkhet	Count	47	30	77
		% within Detainee Place	61.0%	39.0%	100.0%
	Kapilbastu	Count	26	13	39
		% within Detainee Place	66.7%	33.3%	100.0%
	Lalitpur	Count	18	4	22
		% within Detainee Place	81.8%	18.2%	100.0%
	Rupendhai	Count	101	127	228
		% within Detainee Place	44.3%	55.7%	100.0%
	Dhanusha	Count	13	39	52
		% within Detainee Place	25.0%	75.0%	100.0%
	Baglung	Count	60	47	107
		% within Detainee Place	56.1%	43.9%	100.0%
	Myagdi	Count	17	29	46
		% within Detainee Place	37.0%	63.0%	100.0%
	Parbat	Count	8	14	22
		% within Detainee Place	36.4%	63.6%	100.0%
	Bardiya	Count	38	26	64
		% within Detainee Place	59.4%	40.6%	100.0%
	Ramechhap	Count	11	2	13
		% within Detainee Place	84.6%	15.4%	100.0%
Dolakha	Count	27	18	45	
	% within Detainee Place	60.0%	40.0%	100.0%	
Jhapa	Count	40	52	92	
	% within Detainee Place	43.5%	56.5%	100.0%	
Sunsari	Count	5	3	8	
	% within Detainee Place	62.5%	37.5%	100.0%	
Siraha	Count	57	16	73	
	% within Detainee Place	78.1%	21.9%	100.0%	
<b>Total</b>		<b>Count</b>	<b>951</b>	<b>689</b>	<b>1640</b>
		<b>% within Detainee Place</b>	<b>58.0%</b>	<b>42.0%</b>	<b>100.0%</b>

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**Table 9: Physical and Mental Check-up**

			Did you have health check-up before keeping in detention?		Total
			Yes	No	
<b>Detainee Place</b>	Kathmandu	Count	223	6	229
		% within Detainee Place	97.4%	2.6%	100.0%
	Morang	Count	117	0	117
		% within Detainee Place	100.0%	0.0%	100.0%
	Banke	Count	107	2	109
		% within Detainee Place	98.2%	1.8%	100.0%
	Kaski	Count	213	17	230
		% within Detainee Place	92.6%	7.4%	100.0%
	Kanchanpur	Count	79	15	94
		% within Detainee Place	84.0%	16.0%	100.0%
	Udayapur	Count	55	5	60
		% within Detainee Place	91.7%	8.3%	100.0%
	Surkhet	Count	78	0	78
		% within Detainee Place	100.0%	0.0%	100.0%
	Kapilbastu	Count	54	5	59
		% within Detainee Place	91.5%	8.5%	100.0%
	Lalitpur	Count	22	0	22
		% within Detainee Place	100.0%	0.0%	100.0%
	Rupendhai	Count	239	3	242
		% within Detainee Place	98.8%	1.2%	100.0%
	Dhanusha	Count	52	2	54
		% within Detainee Place	96.3%	3.7%	100.0%
	Baglung	Count	119	9	128
		% within Detainee Place	93.0%	7.0%	100.0%
	Myagdi	Count	48	0	48
		% within Detainee Place	100.0%	0.0%	100.0%
	Parbat	Count	24	1	25
		% within Detainee Place	96.0%	4.0%	100.0%
	Bardiya	Count	75	0	75
		% within Detainee Place	100.0%	0.0%	100.0%
	Ramechhap	Count	24	0	24
		% within Detainee Place	100.0%	0.0%	100.0%
	Dolakha	Count	59	21	80
		% within Detainee Place	73.8%	26.2%	100.0%
Jhapa	Count	100	10	110	
	% within Detainee Place	90.9%	9.1%	100.0%	
Sunsari	Count	8	0	8	
	% within Detainee Place	100.0%	0.0%	100.0%	
Siraha	Count	81	0	81	
	% within Detainee Place	100.0%	0.0%	100.0%	
<b>Total</b>		<b>Count</b>	<b>1777</b>	<b>96</b>	<b>1873</b>
		<b>% within Detainee Place</b>	<b>94.9%</b>	<b>5.1%</b>	<b>100.0%</b>

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**Table 10: Total number of juveniles interviewed in detention**

		Frequency	Percent
<b>Valid</b>	Female	31	6.5
	Male	443	93.5
	<b>Total</b>	<b>474</b>	<b>100.0</b>

**Table 11: Torture of juveniles by gender**

			Torture and CIDT information.		Total
			Yes	No	
<b>Gender</b>	Female	Count	2	29	31
		% within Gender	6.5%	93.5%	100.0%
	Male	Count	159	284	443
		% within Gender	35.9%	64.1%	100.0%
<b>Total</b>		<b>Count</b>	<b>161</b>	<b>313</b>	<b>474</b>
		<b>% within Gender</b>	<b>34.0%</b>	<b>66.0%</b>	<b>100.0%</b>

**Table 12: Torture of juveniles according to caste/ethnicity**

Caste and Ethnicity	No. of detainees who were tortured	Percentage of detainees tortured	No. of detained from this background	Percentage of detainees from this background
Brahmin Group	12	7.4	46	9.7
Chhetri Group	35	21.7	104	21.9
Newar group	7	4.3	22	4.6
Indigenous group	44	27.3	121	25.5
Terai Ethnic group	26	16.1	73	15.4
Dalit Group	24	15	69	14.5
Other Group	4	2.5	24	5.1
Muslim Group	9	5.6	15	3.2
<b>Total</b>	<b>161</b>	<b>100</b>	<b>474</b>	<b>100</b>

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**Table 13: Prevalence of torture of juveniles per district**

		Torture and CIDT information		Total	
		Yes	No		
<b>Detainee Place</b>	Kathmandu	Count	53	39	92
		% within Detainee Place	57.6%	42.4%	100.0%
	Morang	Count	3	18	21
		% within Detainee Place	14.3%	85.7%	100.0%
	Banke	Count	10	15	25
		% within Detainee Place	40.0%	60.0%	100.0%
	Kaski	Count	22	53	75
		% within Detainee Place	29.3%	70.7%	100.0%
	Kanchanpur	Count	1	12	13
		% within Detainee Place	7.7%	92.3%	100.0%
	Udhayapur	Count	5	10	15
		% within Detainee Place	33.3%	66.7%	100.0%
	Surkhet	Count	2	4	6
		% within Detainee Place	33.3%	66.7%	100.0%
	Kapilbastu	Count	5	13	18
		% within Detainee Place	27.8%	72.2%	100.0%
	Lalitpur	Count	0	4	4
		% within Detainee Place	0.0%	100.0%	100.0%
	Rupendhai	Count	15	57	72
		% within Detainee Place	20.8%	79.2%	100.0%
	Dhanusha	Count	5	7	12
		% within Detainee Place	41.7%	58.3%	100.0%
	Baglung	Count	10	17	27
		% within Detainee Place	37.0%	63.0%	100.0%
	Myagdi	Count	1	4	5
		% within Detainee Place	20.0%	80.0%	100.0%
	Parbat	Count	0	2	2
		% within Detainee Place	0.0%	100.0%	100.0%
	Bardiya	Count	11	5	16
		% within Detainee Place	68.8%	31.2%	100.0%
	Ramechhap	Count	6	3	9
		% within Detainee Place	66.7%	33.3%	100.0%
	Dolakha	Count	0	20	20
		% within Detainee Place	0.0%	100.0%	100.0%
Jhapa	Count	10	13	23	
	% within Detainee Place	43.5%	56.5%	100.0%	
Sunsari	Count	0	1	1	
	% within Detainee Place	0.0%	100.0%	100.0%	
Siraha	Count	2	16	18	
	% within Detainee Place	11.1%	88.9%	100.0%	
<b>Total</b>		<b>Count</b>	<b>161</b>	<b>313</b>	<b>474</b>
		<b>% within Detainee Place</b>	<b>34.0%</b>	<b>66.0%</b>	<b>100.0%</b>

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**Table 14: Did judge ask about torture?**

			If brought before court/other judicial authority for remand did judge/judicial officer ask whether T/ CIDT had occurred?		Total
			Yes	No	
<b>Detainee Place</b>	Kathmandu	Count	103	100	203
		% within Detainee Place	50.7%	49.3%	100.0%
	Morang	Count	29	88	117
		% within Detainee Place	24.8%	75.2%	100.0%
	Banke	Count	24	79	103
		% within Detainee Place	23.3%	76.7%	100.0%
	Kaski	Count	28	160	188
		% within Detainee Place	14.9%	85.1%	100.0%
	Kanchanpur	Count	38	55	93
		% within Detainee Place	40.9%	59.1%	100.0%
	Udhayapur	Count	2	46	48
		% within Detainee Place	4.2%	95.8%	100.0%
	Surkhet	Count	12	65	77
		% within Detainee Place	15.6%	84.4%	100.0%
	Kapilbastu	Count	15	24	39
		% within Detainee Place	38.5%	61.5%	100.0%
	Lalitpur	Count	1	21	22
		% within Detainee Place	4.5%	95.5%	100.0%
	Rupendhai	Count	41	187	228
		% within Detainee Place	18.0%	82.0%	100.0%
	Dhanusha	Count	0	52	52
		% within Detainee Place	0.0%	100.0%	100.0%
	Baglung	Count	20	87	107
		% within Detainee Place	18.7%	81.3%	100.0%
	Myagdi	Count	3	43	46
		% within Detainee Place	6.5%	93.5%	100.0%
	Parbat	Count	1	21	22
		% within Detainee Place	4.5%	95.5%	100.0%
	Bardiya	Count	2	62	64
		% within Detainee Place	3.1%	96.9%	100.0%
	Ramechhap	Count	0	13	13
		% within Detainee Place	0.0%	100.0%	100.0%
	Dolakha	Count	19	26	45
		% within Detainee Place	42.2%	57.8%	100.0%
Jhapa	Count	5	87	92	
	% within Detainee Place	5.4%	94.6%	100.0%	
Sunsari	Count	1	7	8	
	% within Detainee Place	12.5%	87.5%	100.0%	
Siraha	Count	0	73	73	
	% within Detainee Place	0.0%	100.0%	100.0%	
<b>Total</b>		<b>Count</b>	<b>344</b>	<b>1296</b>	<b>1640</b>
		<b>% within Detainee Place</b>	<b>21.0%</b>	<b>79.0%</b>	<b>100.0%</b>

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**Table 15: Did judge ask about torture and ill-treatment from juvenile detainees?**

			If brought before court/other judicial authority for remand did judge/judicial officer ask whether T/ CIDT had occurred?		Total
			Yes.	No.	
<b>Detainee Place</b>	Kathmandu	Count	42	41	83
		% within Detainee Place	50.6%	49.4%	100.0%
	Morang	Count	4	17	21
		% within Detainee Place	19.0%	81.0%	100.0%
	Banke	Count	8	16	24
		% within Detainee Place	33.3%	66.7%	100.0%
	Kaski	Count	6	42	48
		% within Detainee Place	12.5%	87.5%	100.0%
	Kanchanpur	Count	6	7	13
		% within Detainee Place	46.2%	53.8%	100.0%
	Udhayapur	Count	0	13	13
		% within Detainee Place	0.0%	100.0%	100.0%
	Surkhet	Count	0	6	6
		% within Detainee Place	0.0%	100.0%	100.0%
	Kapilbastu	Count	9	3	12
		% within Detainee Place	75.0%	25.0%	100.0%
	Lalitpur	Count	0	4	4
		% within Detainee Place	0.0%	100.0%	100.0%
	Rupendhai	Count	9	53	62
		% within Detainee Place	14.5%	85.5%	100.0%
	Dhanusha	Count	0	11	11
		% within Detainee Place	0.0%	100.0%	100.0%
	Baglung	Count	7	15	22
		% within Detainee Place.	31.8%	68.2%	100.0%
	Myagdi	Count	0	5	5
		% within Detainee Place	0.0%	100.0%	100.0%
	Parbat	Count	0	1	1
		% within Detainee Place	0.0%	100.0%	100.0%
	Bardiya	Count	0	12	12
		% within Detainee Place	0.0%	100.0%	100.0%
	Ramechhap	Count	0	3	3
		% within Detainee Place	0.0%	100.0%	100.0%
Dolakha	Count	7	6	13	
	% within Detainee Place	53.8%	46.2%	100.0%	
Jhapa	Count	1	12	13	
	% within Detainee Place	7.7%	92.3%	100.0%	
Sunsari	Count	0	1	1	
	% within Detainee Place	0.0%	100.0%	100.0%	
Siraha	Count	0	16	16	
	% within Detainee Place	0.0%	100.0%	100.0%	
<b>Total</b>		<b>Count</b>	<b>99</b>	<b>284</b>	<b>383</b>
		<b>% within Detainee Place</b>	<b>25.8%</b>	<b>74.2%</b>	<b>100.0%</b>

## *Prevention of Torture in Nepal*

### ANNEX 2: LIST OF TORTURE COMPLAINTS FILED WITH NEPAL POLICE HUMAN RIGHTS UNIT, ATTORNEY GENERAL'S DEPARTMENT AND NHRC

S.No	Name of the Victim	Age	Sex	Perpetrators	District	Reported to	Reporting Date
1	Ram Biraji Mukhiya	46	F	Nepal Police	Dhanusha	Int'l	4-Jul-12
2	Dev Lal Mukhiya	45	M	Nepal Police	Dhanusha	National/Int'l Orgs	4-Jul-12
3	Dipen Limbu	18	M	Nepal Police	Jhapa	National/Int'l Orgs	30-Jul-12
4	Mishri Lal Malaha	55	M	Nepal Police	Udayapur	NHRC	12-Aug-12
5	Baikunthanath Dahal	58	M	Nepal Police	Udayapur	NHRC	22-Aug-12
6	Khimlal Rijal	22	M	Nepal Police	Kaski	National/International	13-Sep-12
7	Deepak Pariyar	22	M	Nepal Police	Banke	National/International	12-Oct

### ANNEX 3: TOTAL TCA CASES REGISTERED BY AF FROM JULY TO DECEMBER 2012

S.N.	Name	Age	Sex	Date filed	Where filed	Decision
1	Dipen Limbu	18	M	26-Aug-12	Jhapa DC	Active
2	Omesh Lal Pradhan	24	M	30-Aug-12	Kathmandu DC	Active
3	Dawa Dorje Tamang	32	M	12-Dec-12	Sindhupalchowk DC	Active
4	Dhiraj Basnet	38	M	26-Nov-12	Morang DC	Active

### ANNEX 4: DETAILS OF COURT DECISIONS UNDER TCA (JULY TO DECEMBER 2012)

S.N.	Name	Age	Sex	Date filed	Where filed	Decision Date	Details
1	Arjun Gurung	26	M	18-Sep-09	Kathmandu DC	9-July-12	Rs. 30,000/-
2	Shivdhan Rai	18	M/J	12-Mar-10	Kathmandu DC	9July 12	Rs. 10,000/-

## *Torture Briefing*

