

TORTURE BRIEFING

PREVENTION OF TORTURE IN NEPAL

JANUARY TO JUNE 2011



ADVOCACY FORUM-NEPAL
"LAWYERS' FORUM FOR HUMAN RIGHTS & RULE OF LAW"

INTRODUCTION

One of the critical aims of Advocacy Forum's (AF) is to reduce the practice of torture, promote a system of accountability and address impunity relating to torture. As part of that work, the organization produces briefings on trends and patterns relating to torture and other cruel, inhuman or degrading treatment. These briefings also bring to light the state's responses to the complaints communicated to them. AF regularly communicates cases to national and international bodies requesting these bodies to put pressure on the authorities to conduct impartial investigations and to provide security to victims in detention. This briefing is the eighth such briefing providing an analysis of patterns from January to June 2011.

Since the establishment of AF in 2001, its lawyers have undertaken regular visits to places of detention. They currently visit 57 detention centres in 20 working districts namely Baglung, Banke, Bardiya, Dhanusha, Dolakha, Jhapa, Kathmandu, Kanchanpur, Kapilvastu, Kaski, Lalitpur, Morang, Myagdi, Parbat, Ramechhap, Rupandehi, Siraha, Sunsari, Surkhet and Udaypur and collect data from detainees using a standard questionnaire. The main aims of these visits are to assist the police to implement its constitutional obligations to prevent torture and other ill-treatment and ensure redress in the event of torture occurring. The large majority of places of detention visited are District Police Offices (DPOs), Area Police Offices (APOs) as they are the places where those under arrest are usually brought for interrogation and the place where the victims are often compelled to confess to certain crimes under torture.

This program of police detention monitoring in areas with high risk of torture forms part of an integrated intervention strategy which also comprises legal aid to detainees who have no access to a lawyer, documentation of cases and patterns of torture, the initiation of court cases to obtain redress, national and international advocacy as well as awareness-raising among key stakeholders.

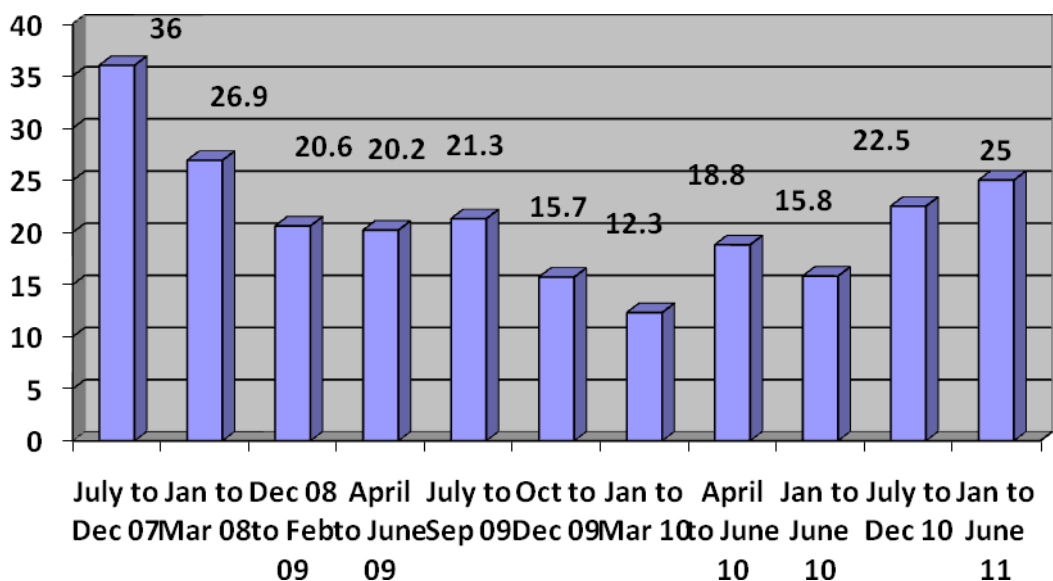
PATTERNS AND TRENDS ANALYSIS

During the reporting period from January 2011 to June 2011, which coincided with Nepal's first report under the Human Rights Council's Universal Period Review process, AF has recorded a significant overall increase in the percentage of torture from 22.5% in the previous six months to 25%. This increase is thought to be related to the ongoing political instability in the country and increases in activities of armed groups in different districts of the Terai region. An analysis of the crimes for which torture victims were arrested also shows the very high rate of torture reported by people arrested under charges such as kidnapping (43.9%), robbery (43.5%), theft (40.4%), arson (37.5%) and arms and ammunitions (35.3%).

It is very worrying that while the Government of Nepal assures the international community that any cases of torture are isolated incidents, and that "there are sufficient constitutional and legal safeguards for the prevention of torture in Nepal", reports of torture in the districts visited by AF continues to rise.

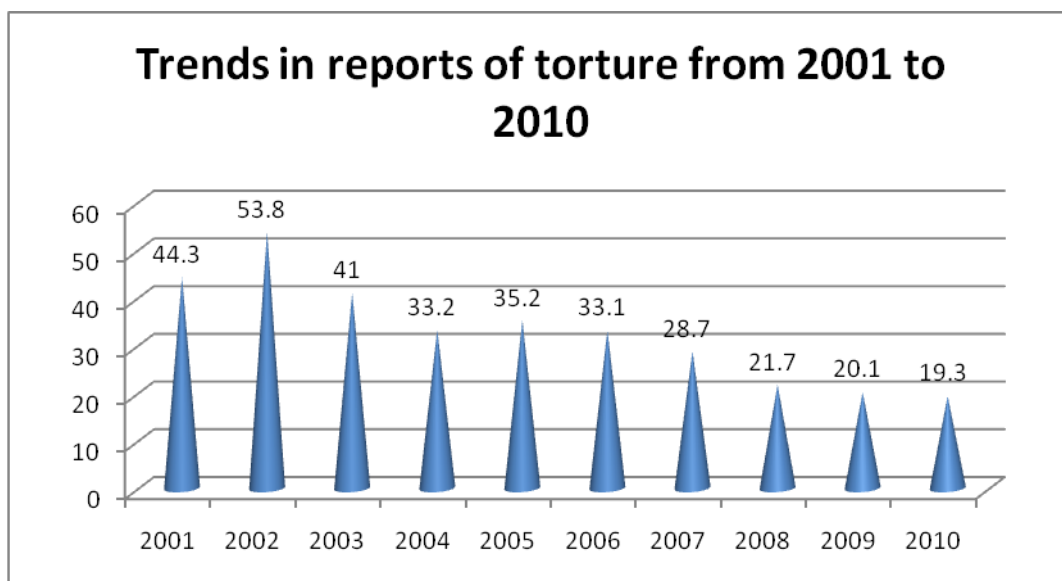
During January to June 2011, AF lawyers interviewed 2268 detainees in 57 detention centres. Among them were 217 (9.6%) women and 2051 (90.4%) men. Of them, 567 detainees (25.0%) have claimed that they were subjected to torture or other cruel, inhuman or degrading treatment. Among the women detainees, 32 (14.7%) claimed they were subjected to torture or other ill-treatment, as opposed to 535 (26.1%) of men. (See Annex 1: Tables 1, 2 and 3 for more details.)

During this period, there was a significant increase in the percentage of torture of female detainees reporting they were tortured: from 25 (13.3%) during July to December 2010 to 32 (14.7%). The 32 women who claimed they had been tortured had been severely beaten by investigating officers and had been treated without consideration for the rights and needs of women as a particularly vulnerable group.



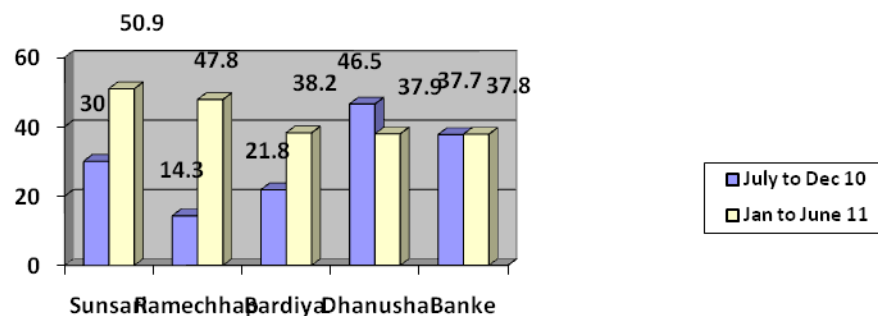
Trends in Reports of Torture in 20 districts where AF visits places of detention

The 25% of detainees who claimed they had been tortured during the period from January to June 2011 represent an increase of 2.5% in comparison to the period from July to December 2010 and an increase of 3.7% in comparison to the period from April to June 2010. During the latter period July to December 2010, AF interviewed a total of 2183 detainees among whom 492 (22.5%) claimed that they had been subjected to torture and ill-treatment. During the earlier period from January to June 2010, AF had interviewed a total of 2015 detainees among whom 319 (15.8%) had claimed that they had been tortured. (For more details of the longer-term patterns, see the above graph and Annex 2: Table 1, 2 and 3 for more details regarding the trends and patterns during the period from July to December 2010.) The increase confirms a reversal in the gradual longer-term reduction in reports of torture noticed in the previous six months (see graph below).



There remain considerable variances in the prevalence of torture between districts. During this period, we find the highest torture percentage is 50.9% in Sunsari District where 29 out of 57 detainees claimed that they have been subjected to torture and ill-treatment. Table 4 in Annex 1 shows the percentages per district during this period and the four highest percentages are highlighted. All these districts are located in the Terai region. They are:

- Sunsari (50.9%)
- Ramechhap (47.8%)
- Bardiya (38.2%)
- Dhanusha (37.9%)



Trends of torture in 5 districts

The above graph shows the districts with the highest percentage of torture during this period. Sunsari, Ramechhap, Bardiya, Dhanusha and Banke are the districts where the highest percentage of torture was reported. When analyzing trends over the last two periods, it is found that there is significantly high increase in torture reported in Ramechhap (from 14.3% to 47.8%) and Sunsari where there is an increase from 30% to 50.9%. During this period, there is 8.6% decrease in torture in Dhanusha district which used to be counted in first two districts in previous periods. In case of Banke the percentage of torture is the same compared to the previous reporting period July to December 2010.

When analysing the charges under which people who claimed they were tortured were held, the data show that those held under suspicion of involvement in kidnapping, robbery, theft respectively face 43.9%, 43.5% and 40.4% chance of being tortured. People later charged with arson (37.5%) are also at high risk of torture. Those charged with arms and ammunition and attempted rape are 35.3% and 33.3% likely to be tortured respectively. (See Annex 1: Table 6 for more details)

In the case of Banke district, a further analysis shows that those arrested people are mostly engaged in armed group, most of people are arrested under charges of abduction and robbery. People of Terai origin are found to be more frequently tortured than the hill community people.

During this period, AF has also documented five cases of criminal acts amounting to torture and ill-treatment by non-state actors. 1 cases are attributed to the Youth Force and Yuba Sangh, both sister organization of CPN-UML, 2 Unified CPN-Maoist and YCL, 1 attributed to YCL and ANNFSU and 1 attributed to an unidentified group in Terai.

District	Number of reports	Alleged perpetrators	Details
Bardiya	1	Unidentified group	This case is described below.
Kathmandu	1	YCL and ANNFSU	On 1 Feb 2011 at around 3:30 to 4 pm, the victim received a phone call threatening him to come to the YCL camp behind Mhepi with Rs. 200,000 to settle a dispute. He was threatened so he immediately went toward the camp. They switched his mobile set off and started beating him up. They beat him up with the precaution

			that no marks would be visible on the body which could be used as evidence against them. The YCL members beat him on his palms, the soles of his feet and on his back. He was rescued by police who came in the incident place. The victim was taken to Man Mohan Memorial Hospital at 8 pm. The victim's brother was continuously threatened to come to settle the dispute.
Morang	1	Youth Force and Yuba Sangh, both sister organization of CPN-UML.	Khilnath Dhakal, a journalist, was assaulted on 5 June 2011 on Sunday night at around 10 pm by activists of the CPN-UML-affiliated Youth Force and Youth Association. Dhakal is the Biratnagar-based correspondent of Nagarik and Republica national dailies. He was ruthlessly beaten up by the group of five to six persons including Manoj Rai taking near Sagarmatha Party Palace, west of District Education Office, Morang. He was beaten indiscriminately, kicking and punched. They used bamboo sticks, bricks and whatever else they could find. He had almost lost consciousness. He was critically injured and was hospitalized at the Nobel Medical College situated at Kanchanbari, Morang. He has sustained a fracture of his neck and nose and several severe wounds on his face, arms and back.
Morang	1	Maoist	A victim was assaulted on 25 April 2011 at around 8 pm in the evening by 25-30 armed (with domestic weapon) Maoist People's Liberation Army members of the Chhintang Sukhani Brigade, Morang cantonment. He is a regional executive member of Constituency no: 8 Yuba Sang, a sister organization of CPN-UML. The victim was attacked on different parts of body with the domestic weapon including <i>khukuri</i>, rod and stick. He appealed for help from his family members who came and opposed the attack. His father also got wounded on the back part of head. Due to the attack/help of villagers, the attackers fled. The victim has 10-12 (blue and black) wounds on his back, one and half inch wound on left hand's elbow, round blue marks on arm, some wounds on different parts of body (right legs ankle, back, thigh) by <i>khukuri</i>, stone, stick and rod).
Udayapur	1	Maoist and YCL	This incident occurred on 24 and 26 Jan 2011 in Udayapur district where a group of people were abducted and assaulted for taking revenge after they had assaulted a UCPN-Maoist member and his wife. 12 people were abducted and two of them were assaulted by the group of UCPN-Maoist cadres. These victims were beaten up with bamboo sticks on various parts of the body. They used gun butts and sticks to beat them. One of the victims complained that his left

			hand had a fracture due to the beating. Finally, the dispute was settled with certain commitment from both sides.
Total	5		

The methods of torture by Non State Actors reported during this period include:

- Beating on such a part that there is maximum torture but there is not marks visible after inflicting torture.
- Beating randomly on various parts of body.
- Attack with domestic tools such as *khukuri*, rod, and sticks on various parts of the body.
- Kicking and punching from all direction and also using bamboo sticks, bricks and whatever other objects to beat the victim.
- Threatening to kill them on the spot.

Summary of the incident: D Tharu, 37, a resident of Bhimapur VDC, Ward no. 7, Belasha, Bardiya district was beaten up by a group of 10/15 unidentified group on 4 March 2011 at 11.45 pm. The perpetrators covered their faces with clothes and were carrying sticks and *khukuri*. Among them, 4-5 people were in a dress like army. Those people stated that they were army people but this was not confirmed

Case Detail: On 4 March 2011 at 11.45 pm, 10/12 unidentified people came to Dhaniram's house. They said that they were army people and came to find someone. They woke Dhaniram and attacked him with a knife. The victim's family suspect that the same group stole things in Durganagar, Ward no. 4, Bhimapur.



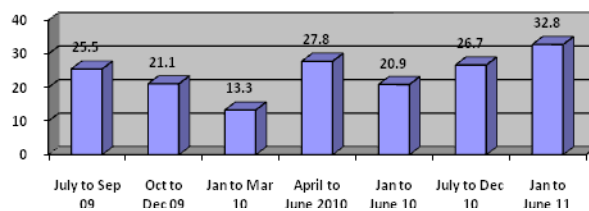
Statement of the victim: On 4 March at 11 pm, my neighbours were watching TV at my home. At 11 pm, all returned back to their houses. I and my wife T Tharuni went to sleep. At 11.45 pm, somebody called saying that they are army people and came to find someone. I kept silent on suspicion that they have come to my house knowing that I was preparing to go to abroad, and that they wanted to extort money from me. Later, they told us not to be afraid and to come out. Then I got up and came out of my house. There were 6/7 people outside my house. Some others were waiting in dark place. I could see they were having sticks with them. My house was robbed before therefore I had suspicion that they have come there to rob my house. As soon as I called for my elder brother, they started beating me. 6/7 people together attacked me randomly on various parts of my body. I was trying to protect myself with my hands. I got injured on my nail and I couldn't stop them further. Later, when I called again to my elder brother, one of them attacked me in my stomach with a knife. He attacked 3 times on my rights side below the chest and I started bleeding. When I cried out loud, my family members woke up. When they came out, there was blood flowing on the ground. My family members saw the scene and started crying. At that time, the perpetrators left the place. Afterwards, the villagers also came. The police of APO Rajapur was called but the phone was not answered, even though it rang for a long time. I was taken to Man Sarowar Clinic located in Rajapur, Bardiya and my wound was

dressed. Later, I was taken to Nepalgunj Medical College in an ambulance. I had stitches on my wounds. The treatment expenses was Rs. 13, 000/-. The police came to my house only on the second day of the incident.

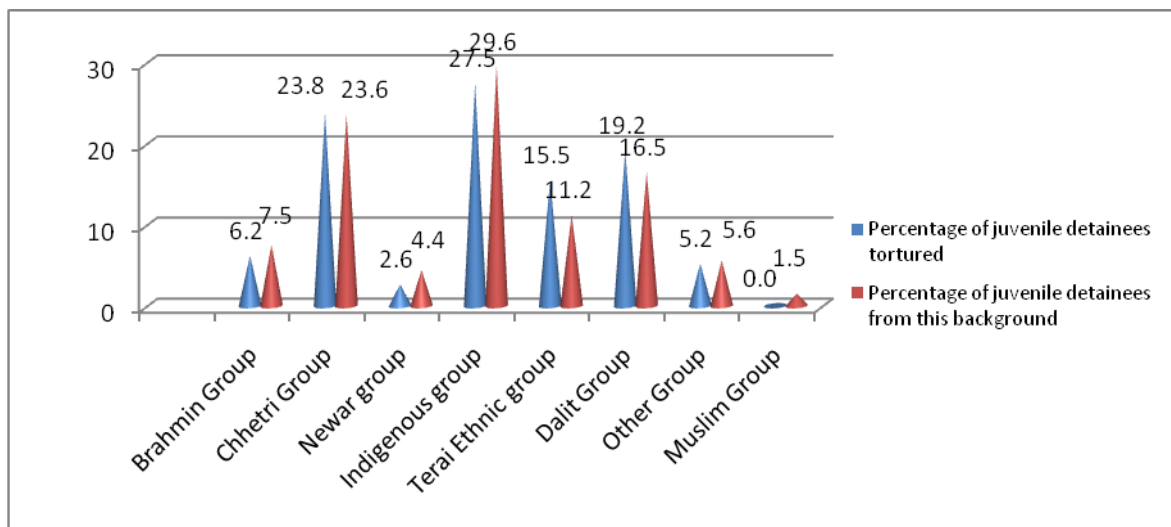
VULNERABLE GROUP

AF has identified juveniles among the most vulnerable categories of detainees, together with refugees, women and people from certain caste or ethnic background.

Juveniles



During this period, AF lawyers visited 588 juveniles of which 42 (7.1%) were girls and 546 (92.9%) were boys. Of them, 193 (32.8%) claimed that they were subjected to torture or other ill-treatment. In comparison, in the period from July to December 2010 the percentage was 26.7%. The data show that there is 6.1% increase during this period compared to the previous period. The percentage of juveniles tortured remains higher than the percentage among the overall population of detainees. In other words, police torture children more frequently than adults, and have consistently done so since AF started to monitor these trends.



Caste-wise torture of juvenile detainees

A background-based analysis shows that juveniles from the Terai Ethnic Group are more likely to be tortured: this category makes out 11.2% of juvenile detainees overall, but 15.5% of those claiming they were tortured followed by Dalit community 16.5% of juvenile detainees overall, but 19.2% of those claiming they were tortured. In case of Chhetri group, this category makes out of 23.6% of juvenile detainees overall, but 23.8% claimed that they are subjected to torture. During the previous period from July to December 2010, when doing district-wise analysis, 2 districts showed a 100% absence of torture of juveniles but during this period only 1 district reported 100% absence of torture. This district is Parbat. The districts with a very high percentage of juveniles claiming torture are Surkhet (60%), Banke (58.3%), Dhanusha (57.1%) and Bardiya (50%).

In previous period July to December 2010 briefing¹, it was reported that the Supreme court issued direction to Home Ministry to arrange for security guards immediately and for the minor to be released under the care of his parents. Home Ministry implemented the decision of Supreme Court on 28 November 2011 and provided security guard and currently the annex building is accommodating children. The annex building is also run by Child Correction Home, Bhaktapur. The Child Correction Home reported that the children who are illiterate and have no interest in study but have interest to learn skill-based trainings are accommodate in this extended annex building.

In previous quarterly briefing April to June 2010, it was reported that the government decided to expand the one existing home at Sanothimi (Bhaktapur); and is planning to open another in Morang district and a third one in Kaski district. The one in Bhaktapur has been extended and has brought in use whereas the other two in Kaski and Morang is not started yet due to lack of budget. But, the Juvenile Justice Coordination Committee and Ministry of Women and Children are doing home work with various organizations. According to information received from Juvenile Justice Coordination Committee, the work of making child correction home in Kaski district is soon starting in support of various organizations.

U Lal Sah, 14 years old, (Date of birth: 27 September 1996), a 6th grader at Sri Nanda Higher Secondary School, Odaha, Saptari district, son of Gallu alias Mr. D N Sah and Ms. R D Sah, a permanent resident of Kamalpur VDC - 3, Kamalpur, Saptari district was reportedly beaten up by a soldier in Koshi Tappu Conservation area at around 2.30 pm on 20 April 2011 (2068/01/07).

Details

On 20 April 2011, he and four villagers B Yadav, B Yadav, J Sah, B L Mandal went to Koshi Tappu Conservation area in search of lost bulls and buffalos. At around 2.30 pm they met a patrol consisting of 2 unidentified army men; Saroj Chaudhari, a forest guard from Kamalpur Range Post and Ram Narayan Khang, President of Odraha Kamalpur Mid-area Management Committee. Verbally abusing them one army man came to them while the others stayed at a distance. The soldier reportedly beat B Yadav with rifles butts, kicked with army boots and punched with fists until he fell on the ground. Then he allegedly kicked J Sah for about 2, 3 times on his chest with army boots. When J Sah fell on the ground he moved towards Umesh and asked, "What

¹ <http://www.advocacyforum.org/downloads/pdf/publications/Briefing-July-to-Dec-2010-final.pdf>

class do you study?" He replied, "I study in grade six." Then the soldier reportedly punched him in the mouth 3 times. Umesh fell down, and lost consciousness. When he came round he found that his father and villagers were there to rescue him. His mouth was bleeding severely, one tooth was broken and 2 teeth were loose.

He and the other victims were taken to Arogya Community Hospital, Fattepur, Saptari district in an ambulance. His broken tooth was removed and the doctor has advised to remove his other two teeth also. He was referred to another hospital. He had to take medicine on a regular basis and take rest at home. Due to the pain he was taking liquid food.

Umesh's doctor under army pressure

It has been reported that on 20 April 2011 (in the night of the incident day) Captain Ramesh Adhikari from Indradal Gulm, Piprapurba VDC, Saptari district visited to Dr. R Sah's clinic. By then the victims had left the clinic. Captain Adhikari reportedly pressurized the doctor not to give undue priority and unnecessary medicines to the victims. The following day Dr. R Sah said to Umesh, "I am not sure if I can continue your treatment." He refused to give medical reports and bills to the victim.

It has come to know that the unidentified army man who beat Umesh was dispatched from Indradal Gulm but it has not been possible to confirm his name to date.

The victim filed a case under the TCA on 16 May 2011.

Women

During this period, AF documented in detail 31 cases of women detainees who were severely tortured. 10 cases are of conflict period and 21 are of current period occurred in inside detention centres of different working districts. Women are one of the vulnerable groups who are more likely to receive torture indiscriminately like male detainees.

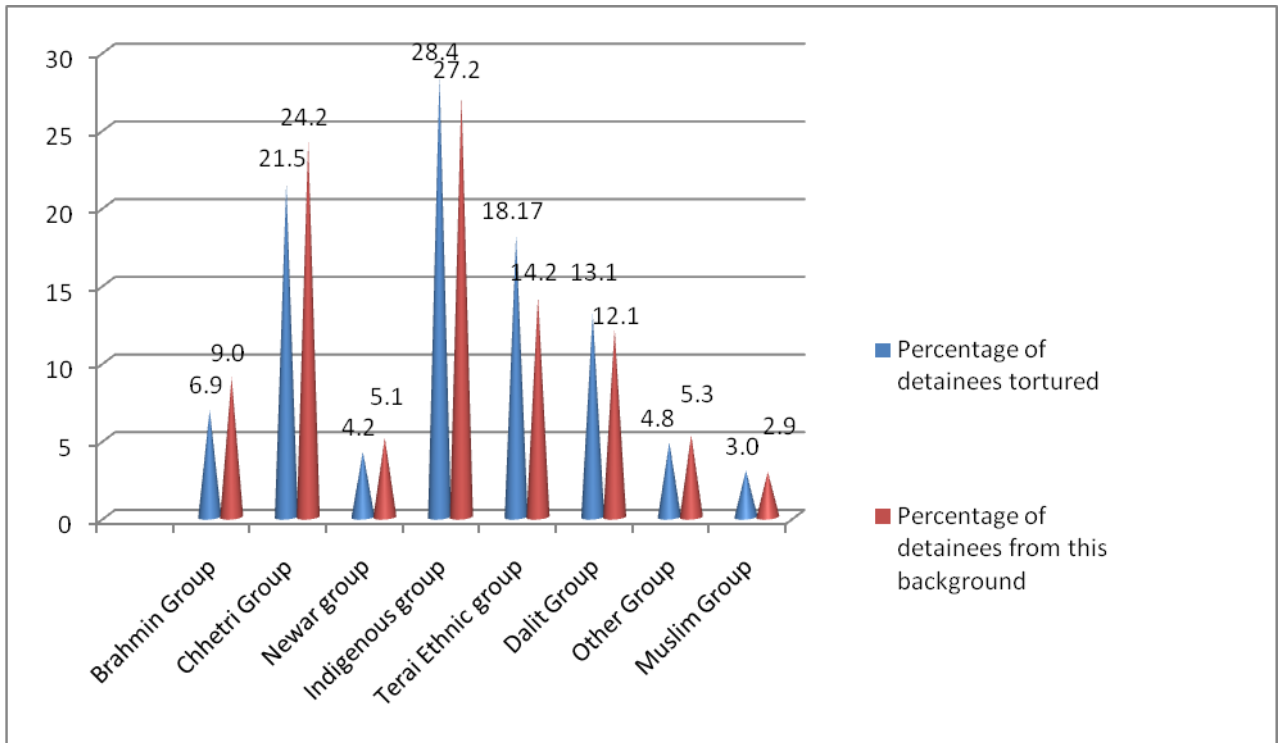
On the occasion of the "UN International Day against Torture - 2011", AF organized an interaction program jointly with National Women Commission at NWC Hall, Bhadrakali, Kathmandu where there were participation of different NGO, government agencies stakeholders of criminal justice system and media personnel. The subject of interaction was "minimizing torture of women in detention".

A report "TORTURE OF WOMEN IN DETENTION: Nepal's Failure to Prevent and Protect"² was released on the same day to mark the International Day against Torture. It analyses the current patterns of torture of women in detention, as well as patterns in torture and sexual violence in detention during the conflict period. The report also addresses the international framework and highlights the government failure to uphold its treaty obligations, despite some positive developments. Speaking as a guest speaker in the event, Minister for Women, Children and Social Welfare accepted the need for wider policy frame work and observance of it in practice to improve the situation of women detainees.

²<http://www.advocacyforum.org/downloads/pdf/publications/torture-of-women-in-detention-nepali-26-june-2011.pdf>

During this period, AF lawyers visited a total of 217 female detainees. Of them, 32(14.7%) claimed that they were subjected to torture or ill-treatment. In comparison to the period from July to December 2010 when only 25 women (13.3%) had claimed they were tortured, this represents an increase by 1.7 %.

Caste and ethnic background



Caste-wise torture infliction on adult detainees

AF is regularly analysing 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. As shown in Table 5 in Annex 1, people from the Terai ethnicity group though representing only 14.2% among detainees, make out 18.17% among the overall number of detainees claiming tortured. Similarly, detainees from the Dalit community are also over-represented among those detainees claiming they were tortured: Dalit community face 13.1% chance of being tortured while only representing 12.1% of detainees whereas detainees from the indigenous community faced 28.4% as compared to representing 27.2% of detainees. AF has observed a clear longer-term trend of detainees from the Terai ethnic groups being tortured more frequently than other detainees.

METHODS OF TORTURE

Generally, detainees report that they are tortured or ill-treated at the time of arrest, during transfer and during interrogation mainly in the period before their statements are recorded and before they are taken to court to be remanded.

In one case, a juvenile Mohamad Khan (10 years old, name changed) was tortured by tying his legs, hanging him upside down from a ceiling hook and then police beat him with bamboo stick on the soles of his feet.

In another case reported from Koshi Tappu Conservation Area in Saptari District, an unidentified soldier patrolling together with a forestry department official, punched a 14-year-old juvenile three times in the mouth and broke one of his teeth leaving two others loose.³

Besides these, some general patterns of torture are as follows:

- Pouring water into the nose and mouth of the victim.
- Beating with hosepipe on hip, back, arms and sensitive part of the body of (male and female) detainees.
- Rolling sticks on the thighs of the victim.
- Making detainee stand on his head taking support of the wall then beating with stick on soles.
- Kicking randomly with boots.
- Beatings randomly with fists on various parts of body.
- Tying victim's hands and legs with rope and hanging from a stick between two tables while beating with hosepipe on legs and other body parts.

Juveniles reported following methods of torture in police custody at the time of interrogation:

- Beating with iron inserted pipe on various parts of the body while hanging tied to a stick between the two tables.
- Making detainees do sit ups for 100 times catching each other's ears.
- Forced to do labour such as cleaning premises.
- Pressing leg
- Beating with steel ruler on the soles of the victim.
- Randomly beating with sticks on various parts of the body especially soles.
- Verbal abuse.

³ Asian Human Rights Commission, 'Nepal, Soldier beats four villagers and a child, leaving them unconscious', 13 May 2011, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-095-2011>

SAFEGUARDS

The Interim Constitution, 2007 and the Torture Compensation Act provide some safeguards against torture at the hands of state actors like the Army, APF, and Nepal Police. In general and by AF's observation, the Nepal Police and other state authorities are failing 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 Tables 7 to 9 in Annex 1, the police are not abiding by the requirement to provide a letter of charge/detention at the time of arrest. Of 2268 detainees, 383 (16.9%) received charge/detention letter at the time of arrest; 1346 (59.3%) received charge/detention letter after bringing in detention, compared to the previous period July to December 2010 where 420 (19.2%) received charge/detention at the time of arrest and 1082 (49.6%) received arrest letter only after bringing in the detention. A further analysis has shown that the police often provide the charge/detention letter only after two or three days of the arrest but falsifying the date of arrest.

The police have also failed to take detainees to the court or to the District Administration Office for remand within 24 hours as provided for in Article 24 (3) of the Interim Constitution. During this period, 1091 (55.7%) of detainees 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), only 397 (19.4%) detainees stated that they were asked by the judges about torture or other ill-treatment whereas 1578 (69.6%) stated that they were not asked by judges about torture or other ill-treatment. (See Annex 1: Table 8 and 13.) This represents an improvement from 5.5% in the previous period, possibly as a result of a number of interactions with judges organized by AF.

Major problems remain with regard to the critical issue of health check-ups which according to the Torture Compensation Act 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, 2101 detainees (92.6%) stated that they were provided with health check-ups in the early part of their detention whereas in the previous period from July to December 2010, 1836 (84.1%) said they were provided with a health check-up. However, according to the detainees, health check-ups are dealt with as a formality by 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.

When victims claimed before the court that they were tortured and when courts give orders to the police to take the victims for physical and mental check-up, 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.

An additional challenge is posted by the role of Chief District Officers (CDOs) as highlighted in previous briefings. CDOs are the Home Ministry's main representatives at the district level and supervise the police. At the same time, they have wide judicial powers under several laws, amounting to a conflict of interest. AF filed the Petition of Public Interest Litigation (PIL) on 6 April 2010 (Writ No W 0043) to challenge the quasi-judicial powers of CDOs. The petition argued that provisions in no less than ten 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. The case is *sub judice* before the Supreme Court. The final verdict has been postponed several times. It is now scheduled for 8 August 2011.

STATE RESPONSES TO REPORTS OF TORTURE

In its report to the UPR, the Government of Nepal stated that "Nepal is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Constitution recognizes the right against torture as a fundamental right. Any form of physical or mental torture or cruel, inhuman or degrading treatment for any reason is prohibited, and legally punishable. A victim of torture is entitled to compensation as specified by law. The Torture Related Compensation Act 1996, is a special legislation in this respect. A bill to criminalize the act of torture is being considered by the GON."⁴ It continued by saying that, "The GON views any alleged acts relating to torture in any part of the country with serious concern. It has carried out investigations of allegations of such acts. Necessary punitive measures have been taken subject to law against those found indulged in such act. The GON is seriously considering the recommendations made by the Special Rapporteur on Torture for making necessary legal reform."⁵

Furthermore it identified the following areas as key national priorities and commitments: "institutionalizing the rule of law, bringing the on-going peace process to a meaningful conclusion; framing a new constitution, carrying out a democratic, federal, inclusive and progressive state restructuring; rehabilitation and integration of Maoist combatants; [...] making necessary legal reforms and effective implementation of relevant laws; effective implementation of human rights action plan⁶, and other national action plans, including on CEDAW and on the rights of PWDs; [...] institutional strengthening of national human rights

⁴ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 Nepal, Human Rights Council Working Group on the Universal Periodic Review Tenth session Geneva, 24 January–4 February 2011, A/HRC/WG.6/10/NPL/1, 12 November 2010 Original: English Para 46

⁵ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 Nepal, Human Rights Council Working Group on the Universal Periodic Review Tenth session Geneva, 24 January–4 February 2011, A/HRC/WG.6/10/NPL/1, 12 November 2010 Original: English Para 47

⁶ The Human Rights Action Plan sets out among other things, plans for legal reform, justice administration and management reform, and prison management and reform. There is only one direct reference to torture, in the section on legal reform, identifying as a problem the "lack of effective implementation of laws relating t torture and compensation" (p.71). The plan also states that the "correction system needs to be able to assure the full protection of human rights" (p.78) but fails to specifically mention torture in detention centres.

institutions; support for judicial reforms and law enforcement agencies.”⁷ As well as “capacity building on treaty body reporting; carrying out further measures to end impunity in any form; providing transitional justice; ending caste-based discrimination in all forms; effective implementation of ICERD; ending GBV; national monitoring of status of implementation of human rights treaty obligations; improvement in prisons and detention facilities; and enhanced human rights education to law enforcement agencies, armed and police forces are also the key priorities and commitments. Commitments also include continued constructive engagement with UN, human rights mechanisms and international community and close collaboration with the civil society.”⁸ The recognition by the Government of Nepal that these are areas that need to be priorities is welcome. However there are remaining concerns on how the government plans to implement these statements.

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

During this period, AF communicated 13 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 the cases, protection for the victims from further torture in detention and action against the alleged perpetrators. AF meets with these agencies from time to time to update them the situation of torture in detention centers and share findings of its other activities. Since last 1 and half years, none of these agencies have provided written responses to AF. AF sought meetings with all concerned agencies last year and discussed about the cases with them. Police stated that the cases are under investigation and that it will provide a report after they finish their investigation.

However, no response has been received for a long period. AF contacted the HR Unit of Police and received response that the Home Ministry has made an internal policy that the information should be made public or processed through home ministry. Therefore, the HR Unit of the Nepal Police is now consistently responding that AF should approach the Home Ministry to get the responses to its complaints and that the Police have submitted their updates to the Home Ministry. AF is reviewing its strategy for working with these national agencies.

⁷ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 Nepal, Human Rights Council Working Group on the Universal Periodic Review Tenth session Geneva, 24 January–4 February 2011, A/HRC/WG.6/10/NPL/1, 12 November 2010 Original: English Para 104.

⁸ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 Nepal, Human Rights Council Working Group on the Universal Periodic Review Tenth session Geneva, 24 January–4 February 2011, A/HRC/WG.6/10/NPL/1, 12 November 2010 Original: English Para 105

LITIGATION

During the armed conflict, many people were found tortured and ill-treated by state and non-state actors. But due to fearful environment and fear for their life people did not file cases under the Torture Compensation Act (TCA) against perpetrators who tortured them. Many of these victims still suffer from the physical and mental impact. AF from its establishment has supported victims to file cases seeking compensation under the TCA. However, as the Act requires victims to file complaints within 35 days of the torture or of their release, many of the victims of torture during the conflict have not been able to file cases. They are also unable to file First Information Reports as torture is not listed as a crime in the annex to the State Cases Act and in the absence of any other enabling legislation.

During this period, AF assisted only two victims to file cases under the TCA: one from Jhapa and the other from Udayapur (See Annex 4). This is the lowest number of cases filed under TCA by victims. During this period, AF lawyers found that the main reason for not filing is the insecure feeling of victim in detention and outside detention. When the victims are in detention, they are afraid of further torture and when they are outside they are afraid that the police will trap them in false charges if they file a case against them. The other reason is that the judicial process under TCA is very lengthy; the victim has to face the perpetrators all the time in the court at the time of hearing. Furthermore, the government has not able to provide security to the victims and the victims' families which has increased the insecure feeling among victims.

During this period, there were ten cases under the TCA where compensation was awarded after a long time. (See Annex 5 for details). In some cases, the court also held that the authorities should initiate departmental action against the perpetrators.

Table 1: Numbers of detainees by sex

		Frequency	Percent
Valid	Female	217	9.6
	Male	2051	90.4
	Total	2268	100.0

Table 2: Torture reports

		Frequency	Percent
Valid	Yes	567	25.0
	No	1701	75.0
	Total	2268	100.0

Table 3: Gender and torture and CIDT reports

			Torture and CIDT		Total
			Yes.	No.	
Gender	Female	Number	32	185	217
		% within Gender	14.7%	85.3%	100.0%
	Male	Number	535	1516	2051
		% within Gender	26.1%	73.9%	100.0%
Total		Number	567	1701	2268
		% within Gender	25.0%	75.0%	100.0%

Table 4: District-wise percentages of torture

District			July - Dec 2010	Jan - June 2011
1.	Kathmandu	Number	168	156
		% within Detention Place	25.6%	24.6
2.	Rupandehi	Number	24	27
		% within Detention Place	15.3%	12.1
3.	Dhanusha	Number	33	25
		% within Detention Place	46.5%	37.9

4.	Baglung	Number	5	13
		% within Detention Place	6.6%	18.1
5.	Myagdi	Number	2	8
		% within Detention Place	9.5%	16.3
6.	Parbat	Number	3	1
		% within Detention Place	7.1%	5.3
7.	Bardiya	Number	17	29
		% within Detention Place	21.8%	38.2
8.	Morang	Number	37	19
		% within Detention Place	39.4%	19.2
9.	Ramechhap	Number	3	11
		% within Detention Place	14.3%	47.8
10.	Dolakha	Number	6	19
		% within Detention Place	14.3%	21.3
11.	Jhapa	Number	6	12
		% within Detention Place	23.1%	18.5
12.	Banke	Number	55	51
		% within Detention Place	37.7%	37.8
13.	Kaski	Number	46	89
		% within Detention Place	21.5%	35.3
14.	Kanchanpur	Number	4	3
		% within Detention Place	4.4%	4.4
15.	Udayapur	Number	11	19
		% within Detention Place	16.7%	25.3
16.	Surkhet	Number	28	28
		% within Detention Place	26.4%	30.4
17.	Kapilbastu	Number	7	11
		% within Detention Place	9.5%	24.4

18.	Lalitpur	Number	7	4
		% within Detention Place	8.6%	6.3
19	Sunsari	Number	18	29
		% within Detention Place	30.0%	50.9
20	Siraha	Number	12	13
		% within Detention Place	20.0%	20.6
Total		Number	492	567
		% within Detention Place	22.5%	25.0%

Table 5: Torture in relation to caste group

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	39	6.9	203	9.0
Chhetri Group	122	21.5	549	24.2
Newar group	24	4.2	116	5.1
Indigenous group	161	28.4	617	27.2
Terai Ethnic group	103	18.17	323	14.2
Dalit Group	74	13.1	275	12.1
Other Group	27	4.8	120	5.3
Muslim Group	17	3.0	65	2.9
Total	567	100%	2268	100.0

Table 6: Torture inflicted in relation to charges

Charge. * Torture and CIDT information.

			July to Dec 2010	Jan to June 2011
Charge.	Public Offence.	Count	146	165
		% within Charge.	22.4%	24.1%
	Attempt to Murder	Count	21	28
		% within Charge.	20.6%	24.8%
	No Charge	Count	55	75
		% within Charge.	18.7%	24.1%
	Drug	Count	47	78
		% within Charge.	23.7%	23.8%
	Rape	Count	13	15
		% within Charge.	23.6%	24.6%
	Arms and Ammunition	Count	36	24
		% within Charge.	46.8%	35.3%
	Theft	Count	87	80
		% within Charge.	39.5%	40.4%
	Robbery	Count	8	10
		% within Charge.	29.6%	43.5%
	Murder	Count	27	40
		% within Charge.	14.8%	29.0%
	Attempt to Rape	Count	1	1
		% within Charge.	50.0%	33.3%
	Forest Offence	Count	6	6
		% within Charge.	8.3%	10.9%
	Gambling	Count	0	0
		% within Charge.	.0%	.0%
	Human Trafficking	Count	3	7
		% within Charge.	8.8%	17.1%
	Forgery	Count	8	5
		% within Charge.	19.0%	16.7%
	Traffic Murder	Count	0	0
		% within Charge.	.0%	.0%
	Kidnapping	Count	23	18
		% within Charge.	41.1%	43.9%
	Polygamy	Count	2	3
		% within Charge.	5.9%	13.0%

Table 7 Detention Place * Reasons for arrest given.

			Reasons for arrest given.			Total
			Yes.	No.	Given but after bringing in detention.	
Detention Place	Kathmandu	Number	42	97	496	635
		% within Detainee Place	6.6%	15.3%	78.1%	100.0%
	Morang	Number	45	13	41	99
		% within Detainee Place	45.5%	13.1%	41.4%	100.0%
	Banke	Number	5	49	81	135
		% within Detainee Place	3.7%	36.3%	60.0%	100.0%
	Kaski	Number	5	154	93	252
		% within Detainee Place	2.0%	61.1%	36.9%	100.0%
	Kanchanpur	Number	16	1	51	68
		% within Detainee Place	23.5%	1.5%	75.0%	100.0%
	Udhayapur	Number	10	18	47	75
		% within Detainee Place	13.3%	24.0%	62.7%	100.0%
	Surkhet	Number	22	10	60	92
		% within Detainee Place	23.9%	10.9%	65.2%	100.0%
	Kapilbastu	Number	5	9	31	45
		% within Detainee Place	11.1%	20.0%	68.9%	100.0%
	Lalitpur	Number	39	11	14	64
		% within Detainee Place	60.9%	17.2%	21.9%	100.0%
	Rupandehi	Number	66	58	100	224
		% within Detainee Place	29.5%	25.9%	44.6%	100.0%
	Dhanusha	Number	0	1	65	66
		% within Detainee Place	.0%	1.5%	98.5%	100.0%
	Baglung	Number	5	8	59	72
		% within Detainee Place	6.9%	11.1%	81.9%	100.0%
	Myagdi	Number	7	3	39	49
		% within Detainee Place	14.3%	6.1%	79.6%	100.0%
	Parbat	Number	6	1	12	19
		% within Detainee Place	31.6%	5.3%	63.2%	100.0%
	Bardiya	Number	2	36	38	76
		% within Detainee Place	2.6%	47.4%	50.0%	100.0%
	Ramechhap	Number	16	2	5	23
		% within	69.6%	8.7%	21.7%	100.0%

		Detainee Place				
	Dolakha	Number	38	33	18	89
		% within Detainee Place	42.7%	37.1%	20.2%	100.0%
	Jhapa	Number	23	20	22	65
		% within Detainee Place	35.4%	30.8%	33.8%	100.0%
	Sunsari	Number	1	15	41	57
		% within Detainee Place	1.8%	26.3%	71.9%	100.0%
	Siraha	Number	30	0	33	63
		% within Detainee Place	47.6%	.0%	52.4%	100.0%
Total		Number	383	539	1346	2268
		% within Detainee Place	16.9%	23.8%	59.3%	100.0%

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	
Detention Place	Kathmandu	Number	408	181	589
		% within Detainee Place	69.3%	30.7%	100.0%
	Morang	Number	54	44	98
		% within Detainee Place	55.1%	44.9%	100.0%
	Banke	Number	74	59	133
		% within Detainee Place	55.6%	44.4%	100.0%
	Kaski	Number	81	68	149
		% within Detainee Place	54.4%	45.6%	100.0%
	Kanchanpur	Number	42	26	68
		% within Detainee Place	61.8%	38.2%	100.0%
	Udhayapur	Number	25	28	53
		% within Detainee Place	47.2%	52.8%	100.0%
	Surkhet	Number	42	47	89
		% within Detainee Place	47.2%	52.8%	100.0%
	Kapilbastu	Number	27	14	41
		% within Detainee Place	65.9%	34.1%	100.0%
	Lalitpur	Number	23	29	52

		% within Detainee Place	44.2%	55.8%	100.0%
	Rupandehi	Number	59	160	219
		% within Detainee Place	26.9%	73.1%	100.0%
	Dhanusha	Number	28	35	63
		% within Detainee Place	44.4%	55.6%	100.0%
	Baglung	Number	37	30	67
		% within Detainee Place	55.2%	44.8%	100.0%
	Myagdi	Number	27	21	48
		% within Detainee Place	56.3%	43.8%	100.0%
	Parbat	Number	8	10	18
		% within Detainee Place	44.4%	55.6%	100.0%
	Bardiya	Number	22	24	46
		% within Detainee Place	47.8%	52.2%	100.0%
	Ramechhap	Number	10	9	19
		% within Detainee Place	52.6%	47.4%	100.0%
	Dolakha	Number	16	27	43
		% within Detainee Place	37.2%	62.8%	100.0%
	Jhapa	Number	21	22	43
		% within Detainee Place	48.8%	51.2%	100.0%
	Sunsari	Number	44	12	56
		% within Detainee Place	78.6%	21.4%	100.0%
	Siraha	Number	43	20	63
		% within Detainee Place	68.3%	31.7%	100.0%
Total		Number	1091	866	1957
		% within Detainee Place	55.7%	44.3%	100.0%

Table 9: Physical and Mental Check-up

			Did you have health check-up before keeping in detention?		Total
			Yes.	No.	
Detention Place	Kathmandu	Number	596	39	635
		% within Detainee Place	93.9%	6.1%	100.0%
	Morang	Number	99	0	99
		% within Detainee Place	100.0%	.0%	100.0%
	Banke	Number	132	3	135

		% within Detainee Place	97.8%	2.2%	100.0%
	Kaski	Number	226	26	252
		% within Detainee Place	89.7%	10.3%	100.0%
	Kanchanpur	Number	62	6	68
		% within Detainee Place	91.2%	8.8%	100.0%
	Udhayapur	Number	74	1	75
		% within Detainee Place	98.7%	1.3%	100.0%
	Surkhet	Number	89	3	92
		% within Detainee Place	96.7%	3.3%	100.0%
	Kapilbastu	Number	42	3	45
		% within Detainee Place	93.3%	6.7%	100.0%
	Lalitpur	Number	64	0	64
		% within Detainee Place	100.0%	.0%	100.0%
	Rupandehi	Number	206	18	224
		% within Detainee Place	92.0%	8.0%	100.0%
	Dhanusha	Number	64	2	66
		% within Detainee Place	97.0%	3.0%	100.0%
	Baglung	Number	72	0	72
		% within Detainee Place	100.0%	.0%	100.0%
	Myagdi	Number	49	0	49
		% within Detainee Place	100.0%	.0%	100.0%
	Parbat	Number	18	1	19
		% within Detainee Place	94.7%	5.3%	100.0%
	Bardiya	Number	70	6	76
		% within Detainee Place	92.1%	7.9%	100.0%
	Ramechhap	Number	23	0	23
		% within Detainee Place	100.0%	.0%	100.0%
	Dolakha	Number	52	37	89
		% within Detainee Place	58.4%	41.6%	100.0%
	Jhapa	Number	49	16	65
		% within Detainee Place	75.4%	24.6%	100.0%
	Sunsari	Number	53	4	57
		% within Detainee Place	93.0%	7.0%	100.0%
	Siraha	Number	61	2	63
		% within Detainee Place	96.8%	3.2%	100.0%
Total		Number	2101	167	2268

	% within Detainee Place	92.6%	7.4%	100.0%
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Table 10: Total number of juveniles interviewed in detention

Sex

		Frequency	Percent
Valid	Female	42	7.1
	Male	546	92.9
	Total	588	100.0

Torture of juveniles by gender

			Torture and CIDT information.		Total
			Yes.	No.	
Gender	Female	Number	8	34	42
		% within Gender	19.0%	81.0%	100.0%
	Male	Number	185	361	546
		% within Gender	33.9%	66.1%	100.0%
Total		Number	193	395	588
		% within Gender	32.8%	67.2%	100.0%

Table 11: Torture of juveniles according to caste/ethnicity

Caste and Ethnicity	No. of juvenile detainees who were tortured	Percentage of juvenile detainees tortured	No. of juveniles detained from this background	Percentage of juvenile detainees from this background
Brahmin Group	12	6.2	44	7.5
Chhetri Group	46	23.8	139	23.6
Newar group	5	2.6	26	4.4
Indigenous group	53	27.5	174	29.6
Terai Ethnic group	30	15.5	66	11.2
Dalit Group	37	19.2	97	16.5
Other Group	10	5.2	33	5.6

Muslim Group	0	0.0	9	1.5
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Table 12: Prevalence of torture of juveniles per district

			Torture and CIDT information.		Total
			Yes.	No.	
Detention Place	Kathmandu	Number	61	143	204
		% within Detainee Place	29.9%	70.1%	100.0%
	Morang	Number	3	15	18
		% within Detainee Place	16.7%	83.3%	100.0%
	Banke	Number	14	10	24
		% within Detainee Place	58.3%	41.7%	100.0%
	Kaski	Number	48	56	104
		% within Detainee Place	46.2%	53.8%	100.0%
	Kanchanpur	Number	1	5	6
		% within Detainee Place	16.7%	83.3%	100.0%
	Udhayapur	Number	8	6	14
		% within Detainee Place	57.1%	42.9%	100.0%
	Surkhet	Number	12	8	20
		% within Detainee Place	60.0%	40.0%	100.0%
	Lalitpur	Number	1	21	22
		% within Detainee Place	4.5%	95.5%	100.0%
	Rupandehi	Number	6	41	47
		% within Detainee Place	12.8%	87.2%	100.0%
	Dhanusha	Number	8	6	14
		% within Detainee Place	57.1%	42.9%	100.0%
	Baglung	Number	3	14	17
		% within Detainee Place	17.6%	82.4%	100.0%
	Myagdi	Number	2	16	18
		% within Detainee Place	11.1%	88.9%	100.0%
	Parbat	Number	0	4	4
		% within Detainee Place	.0%	100.0%	100.0%
	Bardiya	Number	9	9	18
		% within Detainee Place	50.0%	50.0%	100.0%
	Ramechhap	Number	1	3	4
		% within	25.0%	75.0%	100.0%

		Detainee Place			
	Dolakha	Number	5	19	24
		% within Detainee Place	20.8%	79.2%	100.0%
	Jhapa	Number	6	9	15
		% within Detainee Place	40.0%	60.0%	100.0%
	Sunsari	Number	3	1	4
		% within Detainee Place	75.0%	25.0%	100.0%
	Siraha	Number	2	9	11
		% within Detainee Place	18.2%	81.8%	100.0%
Total		Number	193	395	588
		% within Detainee Place	32.8%	67.2%	100.0%

Table 13: Did judge ask about torture?

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.	379	16.7	19.4	19.4
	No.	1578	69.6	80.6	100.0
	Total	1957	86.3	100.0	
Not taken to court		311	13.7		
Total		2268	100.0		

Table 1: Numbers of detainees by sex

		Frequency	Percent
Valid	Female	188	8.6
	Male	1993	91.3
	Other	2	.1
	Total	2183	100.0

Table 2: Torture and CIDT

		Frequency	Percent
Valid	Yes.	492	22.5
	No.	1691	77.5
	Total	2183	100.0

Table 3: Gender and Torture and CIDT

			Torture and CIDT information.		Total
			Yes.	No.	
Gender	Female	Number	25	163	188
		% within Gender	13.3%	86.7%	100.0%
	Male	Number	466	1527	1993
		% within Gender	23.4%	76.6%	100.0%
	Other	Number	1	1	2
		% within Gender	50.0%	50.0%	100.0%
Total		Number	492	1691	2183
		% within Gender	22.5%	77.5%	100.0%

Annex 3: 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
1	Mr. Rajit Ram Yadav	21	M	Nepal Police	Banke	National
2	Mr. Binod Lohar	23	M	Nepal Police	Jhapa	National
3	Mr. Sahaj Ram Tharu (Yadav)	19	M	Nepal Police	Banke	National/International
4	Ganesh Kumar Limbu	50	M	Nepal Police	Morang	National
5	Shiva Raj Khatri	45	M	Nepal Police	Surkhet	National
6	Liladhar Khadka	35	M	Nepal Police	Surkhet	National
7	Megh Raj Rai	38	M	Maoists	Morang	National
8	Ganesh Mandal	38	M	Nepal Police	Morang	National
9	Fahad Khan Usmani	10	M	Nepal Police	Rupandehi	National/International
10	Umesh Lal Yadav	14	M	NA	Saptari/Udayapur	National/International
11	Atiram Rana	28	M	Nepal Police	Banke	National/International
12	Thir Nath Sharma	45	M	NA	Baglung	National/International
13	Kedar K. C	34	M	Nepal Police	Lalitpur	National/International

Annex 4 Total TCA cases registered by ADVOCACY FORUM from January 2011 to June 2011

S.N.	Name	Age	Sex	Date filed	Where filed
1	Binod Kumar Bishwakarma	23	M	28 Feb 2011	Jhapa DC
2	Umesh Lal Sahu	14	M/J	16 May 2011	Udaypur DC

Annex 5: Details of court decisions under TCA

S.No	Name of the victim	District	Date filed	Decision Date	Compensation Award
1	Pitamber alias Narayan Thapa	Morang	4 Feb 2009	23 Feb 2011	Rs. 15,000/-
2	Padam Maya Sunuwar	Ramechhap	16 Feb 2010	1 Feb 2011	NRs. 20,000/- plus departmental actions against the perpetrators involved
3	Purna Bahadur Gurung	Kaski	8 Dec 2008	3 March 2011	Rs. 5,000/-
4	Chinku Tharu	Bardiya	21 June 2009	5 April 2011	NRs 50,000/- plus departmental action against the perpetrator involved
5	Mahima Kusule	Dolakha	20 Jul 2010	22 May 2011	Rs. 15, 000/-
6	Pema Dorje Tamang	Dolakha	13 Aug 2010	22 May 2011	Rs. 15, 000/-
7	Kamal Pun	Baglung	DC-01.08.2008 AC-11.08.2009	17 Jan 2011	NRs. 20,000/- plus departmental actions against the perpetrators involved
8	Rajendra K.C.	Baglung	DC- 06.11.2006 AC-03.04.2008	13 Feb 2011	Rs. 10, 000/-
9	Santosh Kumar Shah	Dhanusha	17 Sep 2009	15 June 2011	Rs. 25, 000/- plus departmental actions against the perpetrators involved
10	Raj Narayan Chaudhary	Morang	31 Mar 2009	2 June 2011	Rs. 15, 000/-