



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of NEPAL* to the conclusions and
recommendations of the Committee against Torture (CAT/C/NPL/CO/2)**

[1 June 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services

Recommendations, paragraphs 12 and 13

Definition and widespread use of torture

1. A draft Torture Act has been prepared which incorporates the definition of torture in the spirit of the Article 1 of the Torture Convention. The draft has been referred to the Ministry of Law, Justice and Parliamentary Affairs for technical approval. The draft Act broadens and widens the definition of torture in the spirit of the torture convention.
2. As far as the allegation of the widespread use of torture is concerned, the democratic government of Nepal does not condone torture of any kind. The laws of the land and the policy of the State are geared to completely ban torture of all kinds. Government does not spare anyone found guilty of involving in torture is who is liable to a stern punishment. Isolated and sporadic incidents cannot be generalized as widespread use of torture. This has to be viewed in the changed context of the country where overall human rights situation has improved fundamentally after April 2006.

Recommendation, paragraph 14

Detention

3. The Terrorist and Disruptive Act (Control and Punishment) Ordinance, 2004 has been repealed. No person has been detained under the Public Security Act. The Interim Constitution of Nepal has made mandatory provision that any detained person has to be present before the competent judicial authority within 24 hours of the arrest and one should not be held longer without the order of the court. The Government of Nepal has been seriously implementing these provisions and is totally committed to uphold this constitutional imperative. The Government has sincerely adhered to the principles of internationally recognized human rights and fundamental freedom and is totally committed to uphold them. Article 118 of the Civil Code (Muluki Ain) requires an accused to remain in judicial custody only for trial of certain serious crimes or under certain exceptional circumstances. In rest of the cases, accused are tried under bail or without requiring them to remain in custody.

Recommendation, paragraph 15

National Human Rights Commission

4. The Government of Nepal has been cooperating with all works of the National Human Rights Commission. It has responded properly and adequately to the queries sent by the commission and has extended all cooperation in its tasks of monitoring human rights situation in the country. The Government has taken appropriate actions to provide compensation to the victims of human rights violation as per the recommendation of the NHRC. Thirteen victims of human rights violations were provided with financial support of NRs. 16,25000.00 between December 19, 2005 to August 6, 2006.

Recommendation, paragraph 16

Independence of judiciary

5. The State has adhered to the principle of judicial supremacy and all security agencies have been issued appropriate instructions to abide by the judicial orders of the courts. They have also been instructed not to arrest the individuals who have been released by the order of the

court. They have no instances of such arrest by the security personnel after April 2006. The royal Commission on Control of Corruption (RCCC) constituted by the erstwhile regime has been dissolved. An independent inquiry was commissioned by the Government of Nepal to investigate the excesses done by the RCCC. Report of the inquiry has already been submitted and the Government has initiated the process of its implementation through the Commission on Investigation of Abuse of Authority.

Recommendation, paragraph 17

Non-refoulement

6. No one has been forcefully expelled from Nepal. As an active member of the United Nations and State party to many international human rights instruments, Nepal has been providing shelter to more than one hundred thousand Bhutanese refugees on humanitarian ground despite itself not being a State party to the Refugee Convention of 1951. There is no record of cases of extradition, forced return or expulsion of anyone from Nepal since 1994. In past three years, total 125 foreigners have been deported under the procedure established by the immigration laws of the country and after having completed due legal procedure.

Recommendation, paragraph 18

Universal Jurisdiction

7. The Interim Constitution of Nepal has guaranteed rights against torture as a fundamental rights. It prohibits any kind of physical or mental torture against any individual taken into custody or detained under any circumstance. Torture has been made punishable by law and person subjected to torture is entitled to reparation as stipulated under laws. The draft Criminal Code has made torture as a criminal offence and public officials have been made liable to punishment and fine proportionate to their offence.

Recommendation, paragraph 19

Education on prohibition against torture

8. Both the Government and civil society organizations have been involved on imparting training and organizing workshops, seminars and other awareness raising programs against torture and other cruel, inhuman or degrading treatment or punishment. According to the statistics, a large number of personnel from Nepal Army, Nepal Police and armed Police Force have been trained in various issues of human rights. Such workshops, trainings, and seminars have been regarded as effective tools for not only in changing the behaviour of the targeted officials but also raising general awareness among the mass population against torture. The Government of Nepal has conducted regular monitoring and evaluation of such trainings.

9. A Human Rights Promotion Section has been established in the Office of the Prime Minister and Council of Ministers. Similarly, there are human rights units established in the Ministry of Home Affairs, Nepal Army, Nepal Police and Nepal Armed Police Force. These institutional arrangements have worked for the monitoring of human rights protection and are involved in bringing the human rights violators to the justice as well as provide compensation to the victims of such violations.

Recommendation, paragraphs 20 and 21

Interrogation and detention

10. The government is totally committed to follow the interrogation methods compatible with the provisions of the Convention. As per the Government Cases Act, 1993, all interrogations are conducted in presence of Government Attorney where there is no room for employing torture or any other methods prohibited by the Convention. Any official found guilty of employing torture have been made subject to stern departmental action.

11. Regular monitoring has been taken place to prevent and stop any kind of torture, ill treatment, violence, gender based violence, abuse against children and women. Appropriate legal action has been taken against any person found guilty of such acts. During the last year, 10 security personnel were punished on the charges of torture, 4 on the charge of employing excessive force and 4 more on the charge of murder. The new Act provides that any official tried under the charge of torture shall remain suspended from the job until the final decision of the case by the competent court.

12. There is no state of impunity in Nepal. The democratic government installed after the successful people's movement of April 2006 has taken the policy of employing high priority to the protection of human rights and not to condone impunity under any pretention.

13. At present there is not a single individual detained in the Army barracks. The incidence in the past should have to be viewed in the context of armed conflict in the country prevailed at tht time. Now this has been effectively ended. As far as the question of absence of systematic recording of the detainees is concerned, the Office of the Prime Minister and Council of Minister has arranged to maintain systematic of the people under preventive detention. The process is already in place.

14. Article 15 of the Government's Litigation Act, 1049 (1992) expressly has provided that any accused can request for his/her medical examination while in detention. People in detention or police custody has not been denied such facilities if he/she has sought it. To further improve the process of medical examination, the proposed draft law on torture has incorporated mandatory provision of medical examination before taking any individual into custody and at the time of release.

15. No one has been held in incommunicado detention and the Government has no policy of such practice under any circumstance.

16. The Government is committed to the compliance of the orders of the court. During the last tow years, total 1287 habeas corpus orders were issued from the courts. Security forces and police have been instructed to strictly comply with all judicial orders and alerted that non-compliance shall not be tolerated. The Government is sincere to extend all cooperation to the enforcement of the court orders and ensure its compliance.

17. There is separate juvenile bench established at all the 75 district courts in the country, which are also the courts of first instance/trial courts. This system is already in place and has begun to function.

Recommendations, paragraphs 22 and 23

Systematic review of the all places of detention

18. The National Human Rights Commission, Office of the High Commissioner of Human Rights and the International Committee of Red Cross have been provided with unfettered access to all places of detention.

19. The so called code of conduct for the NGOs floated by the Royal regime has already been scrapped by the democratic government and it no more exists.

Recommendation, paragraphs 24 and 25

Impunity

20. The Government of Nepal is fully committed to end torture and degrading treatment. Allegations of torture are seriously taken up and the persons found guilty of committing torture have been brought to justice. Actions have been taken against number of officials both in the police and army in this regard. On occasions, victims of torture have been awarded with compensation as per the verdict of the competent court of law.

21. No cases of torture have been reported after the political change in the country in April 2006 which demonstrates marked improvement in the situation and signifies fundamental change on the ground. Serious and resolute efforts are being made to end all kinds of torture and degrading treatment. The Comprehensive peace Agreement (CPA) signed between the Government and the Nepal Communist party (Maoist) on November 21, 2006 unequivocally prohibits arbitrary detention, torture and ill treatment and is committed to end impunity. The Interim Constitution of Nepal, 2007 commenced since 15th of January this year has provided specific rights against torture which prohibits application of torture against any individual under arrest or detention for the investigation of crime or trial or any other reason. Torture shall be made punishable under law and the victim of torture shall be provided with compensation under the laws. The CPA also provides that no one shall be subject to arbitrary detention, kept in captivity or abducted. These provisions of the CPA and of the Interim constitution are strong testimonies that the State does not condone torture under any pretension nor is it a state policy to let the perpetrators go with impunity. The National Human Rights Commission as well as the Office of the High Commissioner for Human Rights and the representatives of the International Committee of Red Cross are allowed unhindered access to visit the prisons and places of detention.

22. Sustained efforts have been made to inculcate human rights values in the security personnel. They have been continuously sensitized to uphold the human rights and humanitarian law in the discharge of their duties. Clear directives have been issued to them to abide by the human rights obligations. Every military and security training course curriculum has a human rights package incorporated as an integral part of the syllabus. Any individual anomaly of human rights violations is taken seriously through departmental and punitive action against the perpetrators.

23. The draft Act on Torture has proposed to set up a separate entity to investigate the cases of torture.

Recommendation, paragraph 26

Marginalized, disadvantaged groups or caste

24. The Government of Nepal is seriously conscious of its responsibility to protect the rights of all members of the society, in particular people belonging to the marginalized and disadvantaged groups or castes. The Constitution and the laws of the country provide for equality before law. The practice of untouchability has been criminalized and is punishable under the laws. No Citizens are discriminated to enter in the service of the State be it civil service, military service or police service. A separate National Dalit Commission has been formed with the view of protecting and promoting the rights of the Dalit communities. Similarly, an independent National Foundation of Indigenous Nationalities has been formed for the protection and promotion of the rights of indigenous nationalities.

Recommendation, paragraph 27

Gender-based violence

25. The amendments on some Nepal Acts 2006 has made sexual harassment punishable under the laws. This includes the Acts on Nepal Police and Nepal Civil Service. Separate Women's cells have been established in different police offices to deal with the cases of violence against women including the sexual violence, trafficking and other crimes against women. Departmental action has been taken to 11 police officials who have been found guilty of sexual harassment.

Recommendation, paragraph 29

Compensation on torture victims

26. Compensation has been provided to victims of torture as per the decision of the competent courts of law. During the last year, 5 victims of torture have been compensated and additional 3 are in the process of being compensated. During this year, Hariraj Chilwal and Thmsher Rai (father of deceased Ganesh Rai) were compensated with amount of Rs. 75,000.00 and Rs. 100,000.00 respectively. The compensation procedure has been streamlined and there is no delay in the process as such once final decision of compensation has been delivered by the competent courts. Ministry of Home Affairs hosts a separate unit for the management of assistance to the victims of conflict.

Recommendation, paragraph 30

Use of Statements made as a result of torture

27. The courts in the country do not take statements made under intimidation, duress, coercion or torture as evidence against the accused. Statements have to be made without duress and coercion and independently corroborated by independent and substantial evidence.

Recommendation, paragraph 31

Improvement of detention facilities

28. Necessary work on the improvement of the physical infrastructures of jails is undergoing. A Bill has been produced to the Interim Legislature (Parliament) for the protection of the rights

of the convicted prisoners as per the international norms and standards, including the introduction of system of open jail and community service to the inmates under certain qualifications in order to allow them improve their past behavior and prepare grounds for their rehabilitation in the society after they complete the terms of their sentence.

Recommendation, paragraph 32

Trafficking

29. No officials are involved in the acts of trafficking. The Government has adopted series of both policy and programmes to control the crime of trafficking in persons in general and trafficking of girls and children in particular. Broad-based and multi-pronged strategies are in place to address this problem in its entirety that involves prevention, strengthening of administrative and law enforcement measures and, rescue and rehabilitation. Correspondingly, national laws have been formulated, amended and reformed and action plans devised to effectively deal with the problem. The Trafficking in Person (Control) Act, 1987, as amended in 2003 has incorporated harsher penalties to the culprits and elaborated provisions to address new complexities of trafficking.

30. Following an extensive consultation with different stakeholders, a National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation (NPA) was formulated. In July 2001, a thorough review of the NPA was undertaken in order to incorporate the changing dynamics of the trafficking in human being and new obligations evolving from the SAARC Regional Convention on Preventing and Combating Trafficking of Women and Children for Prostitution. The establishment of the Ministry of Women and Social Welfare in 1995, which has later expanded to include the component of children and renamed the Ministry of Women, Children and Social Welfare (MWCSW) in 2000, provided further impetus to strengthening institutional capacity of the Government in its fight against trafficking. The Ministry currently works as the national focal point for implementing the NPA and all other activities geared against the trafficking of women and children. A 16-member high level National Co-ordination Committee is in place, which includes representatives from various line ministries, including NGOs. Under the NCC there is a broad-based National Task Force, District Level Task Force in selected vulnerable districts. The District Task Forces co-ordinate and implement both preventive and curative activities against trafficking at the district level. Similarly, there is Village/Municipality Level Task Force, in the villages considered vulnerable in terms of trafficking of girls, comprising both government and civil society actors that conduct preventive activities and reduce the push factors of trafficking. Nepal Police has created a Women's Cell at its headquarters and in 19 other districts to effectively deal with the issues of violence against women, including the trafficking of women and children.

31. Cases of trafficking have been seriously prosecuted and culprits have been brought to the book. The followings are the examples of few cases of trafficking, wherein final judgment has been delivered by the Supreme Court and the culprits have been sentenced. There are numbers of cases to which prosecution is in progress whereas others are under adjudication in the courts.

a) Pasang Lama vs. H.M.G./N; Criminal case no. 560 of 2045 B.S. Held 20 years imprisonment.

b) Krishna Bahadur Ghalan vs. H.M.G./N / Lal Bahadur Moktan vs. H.M.G./N Criminal case no. 531/580 of 2045 B.S. Held 20 years imprisonment.

- c) Dal Bahadur Ghalan vs. H.M.G./N; Criminal case no. 321 of 2048 B.S. Held 20 years imprisonment.
- d) Jivan Gole vs. H.M.G./N; Criminal case no. 1331 of 2053 B.S. Held 15 years imprisonment and fine of NRs 30,000.
- e) Sim Bahadur Nepali alias Shyam Bahadur Nepali vs. H.M.G./N; Criminal case no. 2508 of 2057 B.S. Held 20 years imprisonment.
- f) Chandra Prasad Bautam vs. H.M.G./N; Criminal case no. 2426 of 2057 B.S. Held 12 years imprisonment and fine of NRs 160,000
- g) Ramesh Thapa Magar vs. H.M.G./N; Criminal case no. 3101 of 2058 B.S. Held 15 years imprisonment
- h) Renuka Poudel vs. H.M.G./N; Criminal case no. 2843 of 2059 B.S. Held 20 years imprisonment.
- i) Dhak Bahadur Tamang vs. H.M.G./N; Criminal case no. 2940 of 2059 B.S. Held 10 years imprisonment and fine of NRs. 32,000.
- j) H.M.G./N vs. Madan Pariar alias Dane: Criminal case no. 2758 of 2059 B.S. Held 15 years imprisonment and fine of NRs. 160,000
- k) Bhimsen Pariar alias Khajur vs. H.M.G./N; Criminal case no. 3235 of 2059 B.S. Held 12 years imprisonment and fine of NRs. 128,000
- l) H.M.G./N, as per the complaint of Sumitra Aryal, vs. Rajesh Lama alias Raghu Criminal case no. 3232 of 2060 B.S. Held 5 years imprisonment and fine of NRs. 30,000
- m) Ram Bahadur Magar vs. H.M.G./N; Criminal case no. 3002 of 2060 B.S. Held 12 years imprisonment and fine NRs. 128,000.
- n) Nava raj Gamal Shrestha vs. H.M.G./N / Asha Ram Tamang vs. H.M.G./N; Criminal case no. 3004/3357 of 2060 B.S. Held 12 years imprisonment and fine of NRs. 240,000 to each person.
- o) Uttam Lama vs. H.M.G./N; Criminal case no. 17 of 2061 B.S. Held 10 years imprisonment and fine of NRs. 56,000 to each person.

32. In view of the need for special care and protection of the victims of trafficking, the Ministry of Women, Children and Social Welfare has run a “women self-reliance and rehabilitation home” since 1998. Civil society organizations are being encouraged to run such centers. Many NGOs are doing this. In addition, many NGOs are working at the grassroots level for the prevention of trafficking.

Recommendation, paragraph 33

Child soldiers

33. No person under the age of 18 is recruited in the Nepal Army. The security forces have not used children as spies or messengers. Since the United Nations Mission in Nepal has been entrusted with the task of monitoring and registration of the arms and combatants of the Maoists as per the Comprehensive Peace Agreement between the Government and Nepal Communist Party (Maoist), it is understandable that no child soldiers can remain in the Maoist side as well.

Recommendation, paragraph 34, c

On becoming of State party to ICC

34. The Parliament of Nepal has already passed a resolution that Nepal shall initiate the process of acceding to the Rome Treaty. Necessary groundwork is in progress towards this end.

35. The High Level Commission led by former Justice of the Supreme Court of Nepal, Mr. Krishna Jung Rayamajhi, has already submitted its report on the excesses done by various entities to suppress the People's Movement of 2006 with recommendations to take action against 202 people found guilty of such excesses.

36. The historic Comprehensive Agreement signed between the Government of Nepal Communist Party (Maoist) on 21 November 2006 has effectively ended the ten year long conflict. This has resulted in the fundamental improvement in the overall human rights situation in Nepal. The CPA also provides for the establishment of Truth and Reconciliation Commission to create an environment of peace and harmony in the society.
