

Alternative Report
to
Second, Third and Fourth Periodic (Combined)
State Report of Nepal

Submitted to

UN Committee Against Torture

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Prepared by: Human Rights Treaty Monitoring Coordination Committee
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Co-ordinated by: Centre for Victims of Torture Nepal (CVICT)

Coordinator: Dr. Bhogendra Sharma, President, CVICT Nepal

Writing Committee Members:

Ms. Bidhya Chapagain, INSEC

Mr. D. N. Parajuli, HURF, Ilam

Mr. Kamdev Khanal, INSEC

Mr. Rabindra Bhattarai, Advocate

Mr. Rajendra Ghimire, Advocate, CVICT Nepal

Ms. Ranjana Thapa, Advocate

Mr. Shyam Babu Kafle, Advocate, CVICT Nepal

Ms. Srijana Pokhrel, INHURED

Edited by:
Rabindra Bhattarai
Kamdev Khanal

Foreword

We have prepared and submitted this report to the UN Committee against Torture in the midst of situation where grave human rights violations especially torture are systematic in Nepal. Impunity and failing to address the reparation to the victims are serious problems. Torture is the genesis, reasons, effects and results of violent conflict. Impact of torture among population is a serious problem especially since Nepal does not have enough health professionals to deal with the substantial number of people suffering from medical psychosocial and other effects of torture. The alternative report is a combine effort made by human rights organizations and civil society to give more information to the Committee against Torture about the implementation of CAT in Nepal. Basically the report has contained the issues, which the state report has missed to deal with, or not adequately dealt with.

As we all are aware of the fact that the situation of human rights in our country is critical now due to the on going armed conflict between state security forces and Maoist rebels. The conflict has compelled many Nepali people to be killed, disappeared and tortured by either side of the conflict. We have prepared this alternative report in this critical situation and tried to reflect the scenario of the country.

The report has basically divided into three parts. First part deals with the general information of country. Second part deals with the implementation status of articles of CAT in Nepal. The third part has given conclusion and recommendation to the committee to recommend to Nepal government to take initiatives for the proper implementation of the CAT in Nepal. Name list of the member organizations of HRTMCC contains in schedule 1, name of the participants and organizations which they represent in national and regional level interaction programme, contains in schedule 2 and summary of some representative torture cases during this reporting period has been included in schedule 3 of the report.

A number of people and organizations made concrete contribution to this report. I would like to thank Human Rights Treaty Monitoring Coordination Committee (HRTMCC) for their continuous support in preparing the report through its secretariat at INSEC. My sincere thanks goes to other NGOs and Civil Society members who helped us a lot by providing information or other support. Likewise I must thank writing committee members for their effort to prepare the report. Colleagues from The Redress Trust, London deserve special thanks for their constructive suggestions, comments on the initial draft of the report. Last but not the least; I thank all the staffs of CVICT Nepal for their consistent and dedication effort to produce the report in this form.

I and my colleagues in CVICT are very pleased to have had the chance to undertake this important task and are confident that the report will be helpful for the Committee against Torture and other relevant bodies to understand and act on behalf of international community to help improve the situation of torture in Nepal.

Dr. Bhogendra Sharma
President, CVICT Nepal & IRCT
Co-ordinator, Convention Against Torture, HRTMCC

Acronyms and Abbreviations

AI	-	Amnesty International
APF	-	Armed Police Force
ASI	-	Assistant Sub-inspector
BPIJ	-	Basic Principles on Independence of Judiciary
BPUFLEO-	-	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
BS	-	<i>Bikram Samwat</i>
CAT	-	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCLEO	-	Code of Conduct for Law Enforcement Officials
CDO	-	Chief District Officer
CeLRRd	-	Centre for Legal Research and Resource Development
Const.	-	Constitution of the Kingdom of Nepal
CPBO	-	Central Police Band Office
CPN	-	Communist Party of Nepal
CPNM	-	Communist Party of Nepal Maoist
CVICT	-	Centre for Victims of Torture Nepal
DC	-	District Court
DIG	-	Deputy Inspector General of Police
DoPM	-	Department of Prison Management
DPO	-	District Police Office
DSP	-	Deputy Superintendent of Police
HM	-	His Majesty
HMGN	-	His Majesty's Government of Nepal
HQ	-	Headquarters
HR	-	Human Rights
HRCA	-	Human Rights Commission Act
HRTMCC	-	Human Rights Treaty Monitoring Coordination Committee
HURF	-	Human Rights Forum
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICRC	-	International Committee of Red Cross and Red Crescents
IGP	-	Inspector General of Police
INGO	-	International Non-Governmental Organisation
INHURED	-	International Institute for Human Rights, Environment and Development
INSEC	-	Informal Sector Service Centre
KDPO	-	Kathmandu District Police Office
KDPO	-	Kathmandu District Police Office
NBA	-	Nepal Bar Association
Ne. Ka. Pa.	-	Nepal Kanoon Patrika
NGO	-	Non Governmental Organisation
NHRC	-	National Human Rights Commission
NRs.	-	Nepali Rupees
PA	-	Personal Assistant
PRI	-	Prison Reform International
PTSD	-	Post Traumatic Syndrome Disorder
QGA	-	Quarter Guard Room
RNA	-	Royal Nepalese Army
RPUOB	-	Regional Police Unit Office, Bagmati
SC	-	Supreme Court

SI	-	Sub-Inspector
SMRNCM	-	Standard Minimum Rules for Non-Custodial Measures
SMRTP	-	Standard Minimum Rules for Treatment of Prisoners
SP	-	Superintendent of Police
SPA	-	Summary Proceeding Act
TADA	-	Terrorist and Disruptive Activities (Control and Punishment) Act
TADO	-	Terrorist and Disruptive Activities (Control and Punishment) Ordinance
TCA	-	Torture Compensation Act
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UNHCR	-	United Nations High Commission for Refugees
VDC	-	Village Development Committee
WFP	-	World Food Programme

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Executive Summary

This alternative report submitted to the UN Committee against Torture is a voice of Nepali people through human rights organisations of Nepal. It contains information of the span of 1992 to 2004. It attempts to facilitate the Committee in considering State report of Nepal by providing some specific additional information and a narration of the implementation of the Convention. A team under Human Rights Treaty Monitoring Coordination Committee in consultation with various sectors prepared this report.

Nepal, a member of United Nations, one of the underdeveloped country in South Asia, is under poverty-stricken situation with richness of diversity in topography, ethnicity and biogenetics. Nepal was in semi autocratic political regime for a longer history and it entered to a relatively relaxed political climate after 1990. Unfortunately, the years of multiparty democracy went on with high scale nepotism, corruptions, favouritism and unexpected single or bigger parties' domination throughout governance machinery. Political, ethnic, lingual minorities ruined with injustices.

Formal justice system took a retributive approach with suppressive trend instead of taking restorative trend through corrective measures. Torture and other forms of ill treatments worked as tools to repress the political opponents, suffer minorities and vulnerable groups to force them accept the ruling or dominant party's political impulses.

Communist Party of Nepal (CPN) (Maoist) launched a "people's war" in February 1996. Human rights violations and abuses by both the security forces and members of the CPN (Maoist) have escalated in unprecedented and unpredicted scale. In 2002 and 2003, Nepal recorded the highest number of "disappearances" of any country in the world. The CPN (Maoist) are also reported to have abducted hundreds of people including large number of schoolchildren. Dissolution of the House of Representation and a prolonged imposition of state of emergency drove the Nepal's political system under an unseen military rule. Human rights violations by state security forces escalated in masse.

The Constitution of 1990 authorised Courts as independent judiciary. His Majesty's Government kept its control over the judiciary in many ways including hooking with resource constraints. Above 30 statutes authorise executive to prescribe initial jurisdiction and in some cases appeal jurisdiction on its own as assured discretionary power of the executive. Even the laws authorise the Courts to their competence, there is conservative orientation in the courts that many of the judges and court personnel consider them as part of state organ and they are subject to the consideration of the executive. When a question of torture by police is raised before them, they consider that they and the police have similarities in discharging state function and use of force by police of state securities is considered as legitimate action under powers of maintaining law and order by state agencies. Many of the judges have disregard over human rights instruments and standards, as they believe that human rights are alien concepts.

Legal system seems to be blending of western and oriental values. Torture was practiced as a tool of investigation and punishment from very early of its own state system in the Lichhavi, Malla and post-Malla Period. Promulgation of National Code in 1963 and of Act to Repeal Some Criminal Cases and Remitting Punishment 1964 was the first step in sensing to outlaw the cruel and inhuman punishment in socio-legal context of Nepal. However, the law changed in paper but the practice continued with adding complexities towards degradation. As of today there is suffering mentality among law enforcement officials without being aware on the consequences. Likewise, common people consider and understand torture and other forms of cruel and inhumane treatment as legitimate punishment.

Most common forms of torture practiced are beating on soles of feet (Falanga), random beating, electric shocks, being hooded or blindfolded, rolling a weighed stick along the victim's thighs causing muscle damage (belana), burning with cigarette and forcing the detainee to assure awakened and painful posture (e.g. chicken posture). Animals, insects, even needles are also commonly applied as tools of torture. Other forms of torture applied to destroy the victim psychologically include threats, deprivation of food, and drink, forcing to consume excreta, forcing to remove 'sacred thread' of the upper caste detainees, long-term isolation, confinement in a dark room and inflicting loud noise.

Nepal is in a transition of values and there exists the conflict between ideas of traditional orientations and human rights principles. The practice is dominantly governed by traditional values with orthodox aptitudes. Traditional male dominance of social structure make women and children victims of all sort of organised violence including torture and inhuman treatments in various forms. There is great scarcity of political will to fight the routine and systematic practice of torture.

The information contained in this report, therefore, do not sketch-out the overall scenario of the torture practiced but only hint the glimpses of the severity of the problem. Following are the major concerns of the non-governmental organizations and civil society in particular implementation of the convention.

1. Definition of torture in domestic law does not represent the sense of Article 1 of the Convention and requires to be reframed.
2. There are few statutes that are seriously practiced as instruments to intensify and institutionalize torture as routine practice by state securities. In particular, Sections 5, 9, 11, 13, 15, 17, 19, 20 of Terrorist and Disruptive Activities (Control and Punishment) Act (TADA) 2002 and its successor Ordinances require to be annulled. Similarly, Section 3 of Some Public (Crime and Punishment) Act 1970 requires to be amended. Section 9 of Police Act 1955 has to be repealed and other relevant provisions to be revised.
3. Torture Compensation Act 1996 that offers a great credit to the government is not able enough to address the compensation problems and to give citizens safeguards against from a routine vicious circle of occurrences of torture. Therefore, it requires to be revised in the line of the Convention with revamping the provisions of Sections 3.2, 5.1, 6.2, and 10 of the Act.
4. If formation of Human Rights Promotion Centre, Human Rights (HR) Cell in the Home Ministry, Human Rights Cell in Police Headquarters, Human Rights Cell in Royal Nepalese Army (RNA) and Human Rights Cell of Armed Police Force (APF) are for serving people, these bodies' function should be made public and transparent.
5. The judiciary is not clear to visualise the position of international instrument in hierarchy of law in preventing torture in crime investigation process. Its attitude towards perpetrators is soft and favoring. Judiciary has not given priority on the issues of torture and its prevention in the trainings, workshops, discussions etc. Therefore, new judicial paradigm is essential to combat torture. Judiciary should be clear with complaints handling procedures having appropriate rules and regulations.
6. To give effect of the implementation of Article 3 of the Convention, the UN Convention Relating to the Status of Refugees 1951 and the Additional Protocol (1967) should be ratified and incorporated into domestic law, in order to safeguard the principle of non-refoulment and the right and dignity of refugees and asylum seekers. A proactive programme of action is essential to address the problem of Bhutanese refugees.
7. The definition of torture in proposed Criminal Code on the part of the government is also not consistent with the Article 4 of the Convention, as it does not cover the acts of *attempts*, *complicity* and *participation*. The draft law prescribes fine without specifying upper and lower limits. Therefore, the acts of torture should be defined as serious criminal offence explicitly the act of torture, attempts to torture and complicity and participation thereon. Adequate penalty for the perpetrator should be laid down and the minimum and maximum limitation (at least five to 10 years) of imprisonment. There should be open clause on time limit for lodging complaint or reporting the case of torture.
8. As there are lapses in systematizing education against through professional education and training to law enforcement officials, a sustainable and suitable mechanism should be in place under regular programmes of law enforcement. This should be extended to all public servants including health professionals.
9. Curriculum of high school level and higher-level education should incorporate the message of the prohibition of torture and other cruel, inhuman and degrading

treatment and punishment as well as protective measures of human dignity at all levels.

10. There is no security of the person subjected to arrest to have informed with the family or legal counsel. No specific rules or guidelines are prepared to avoid the potential torture and inhuman treatments during the travel period while taking into custody is available under existing rules and regulations. There are innumerable reports of tortures and misbehaves in the time of arrest. Similarly, the provisions in Prison Act 1963 are with full of ambiguity and inconsistencies with international instruments of human rights.
11. A Commission for the review of the interrogation rules, instructions, methods and practices as well as arrangement of all incarcerations and treatments and correctional programmes should be established and made functional in regular basis to prevent any occurrence of torture.
12. There is absence of mechanism to hear and handle the complaints in case of torture, therefore, an independent national institution should be established and made functional. Similarly, National Human Rights Commission should establish and bring in operation a special wing to handle complaints of torture and recommend the government/ public prosecutor to initiate trial proceeding against alleged perpetrators.
13. Though Torture Compensation Act offered compensation provision for victims and the courts have in some cases decided to compensate victims even in very low scale, there is problem that yet no victim is able to get compensation amount. Therefore, the amount of compensation should be increased in the scale that it provides full reparation and helps for the appropriate rehabilitation of the victims. At the same time, the government should stop re-victimizing torture victims by not providing the decided amount in the name of scarcity of fund.
14. There is no consistent use of confession as evidence in determination of criminal charge by courts. Normally, the courts use confession extracted at police, whether it is voluntary or by compelled manner, as exclusive base for trial and sometimes for conviction. Therefore, there should be clearly established exclusionary rule for confessions. The government should provide sufficient scientific and technical support to crime investigation based on physical evidence.
15. Nepal faces serious problems of other forms of cruel, inhuman and degrading treatments of punishments based on social superstitious values and traditional practices. A proactive programme is essential to address to bring changes addressing various forms of social violence. The most serious forms of such violence generated by all types of non-state actors should be condemned as crime against humanity. Law should be brought to address them appropriately and specifically.
16. For real implementation of the Convention, government with sacred political will should:
 - a. Work together with the actors of non-governmental sectors, winning their hearts and taking them as working partners.
 - b. Declare the competence of Committee against Torture, in accordance with Article 21 of the Convention, to receive and consider communications to the effect that the other State party would claim against non-fulfillment of its obligations under the Convention.
 - c. Declare the competence of Committee against Torture, in accordance with Article 22 of the Convention, to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of violations by it.
 - d. Declare a readiness for co-operation for the examination of any information if the Committee wishes to invite its submissions.
 - e. Sign and access the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- f. Sign and access the Rome Statute of International Court to demonstrate its willingness in prosecuting the alleged perpetrators of committing crime against humanity under its jurisdiction.
- g. Sign and access the Protocol Additional to Geneva Conventions (Protocol II) to demonstrate its willingness to protect the victims of armed conflict of non-international character as Nepal is facing a critical situation of internal armed conflict.

Part I

General

1. Introduction

A. Overview

This is an Alternative Report to the Combined (Second, Third and Fourth) Periodic State Report of Nepal (State report hereinafter) submitted to the UN Committee against Torture. Information contained in this report cover the period between 1992 to 2004. This report has been prepared on behalf of Human Rights Treaty Monitoring Coordination Committee (HRTMCC), a joint forum of NGOs in Nepal working in the field of human rights comprised of 34 human rights organisations (Annex I), by a team of human rights defenders, which was coordinated by Centre for Victims of Torture (CVICT) Nepal.

This report aims to facilitate Committee against Torture (the Committee hereinafter) in considering State report of Nepal that has been submitted to the Committee under an obligation of the Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention hereinafter). This report embodies some specific information additional to the State report and some critical assessment with narrated glimpse of the status of implementation of the Convention in Nepal.

It covers the reporting in three parts: overall introductory; information on specific articles of the convention, and special recommendations.

B. Process and Participation

One of the major activities of HRTMCC is to closely observe the implementation of international human rights treaties in Nepal, obviously, to which Nepal is a party, with due consideration to local contexts. It not only, observes the domestication, i.e., internalisation of international human rights norms but also scrutinise the causes of failure or hindrances of their implementation in socio-political settings and developments. Providing inputs to the international community through alternative to the government reports and dissemination of information is also a significant area of its work.

In the process of preparation of present alternative report on the Convention, a secretariat was established at the Central Office of CVICT Nepal on 7 June 2004. The secretariat through a 'Public Appeal' in newspapers to stakeholders and the civil society invited them to come with torture related information and commentaries thereon for their incorporation in the alternative report.

A Writing Team was formulated under HRTMCC on convenor-ship of CVICT comprised of legal scholars, human rights defenders and defence lawyers. The team-members divided the articles of the Convention to thematic parts and prepared initial draft of the report, pointing out major lapses not covered by the State report. The initial draft was brought to the discussion in the team members meeting and consultations with other concerned individuals and experts.

The secretariat made available a Nepali edition of State report to interested institutions and individuals in June 2004. Three regional consultation meetings and a national workshop were held in the course of collection of information and views of concerned. Regional consultation meeting held in Nepalgunj (a regional transit centre of Midwest and Farwest regions) during June 17 and 18, participated by 78 persons including human rights defenders, judges, lawyers, journalists, government officials, specifically pointed out the failure of defining torture under criminal law and ensuring sanctions over it was the main concern of non-implementation of the Convention.

Likewise, regional consultation meeting held on 2 July 2004, attended by 49 participants of similar disciplines in Pokhara (headquarters of Western region) expressly demanded to declare torture criminal offence and to insure appropriate restitution from the perpetrator to the victims. Another regional consultation meeting held in Biratnagar during 7–8 July 2004. Seventy-eight participants of the programme strongly expressed consensually a requirement of competent national institution for investigation on any allegations of event of torture and systematic and regular monitoring of the detention of any forms.

On 19 September 2004, a national workshop was organised in Kathmandu. The workshop attended by 58 participants discussed on the preliminary draft of the alternative report and pointed out the weakness and missing in the draft report. National workshop further stressed on the need of the expanding the time limitation for complaint filing under the Torture Compensation Act 1996. The participants of the workshop strongly voiced the need of sensitisation in judiciary, government

attorney, law enforcement agencies and security personnel about the legal, social, psychological impacts of the torture cases. Participants also suggested for requirement of scientific crime investigation and fulfilment of necessary technicalities to crime investigators.

The writing team worked out on the initial draft of the report considering these all concerns expressed in the course of above events. The team then prepared a second reading draft. It was circulated to different national and international institutions for their professional experts' comments. After receiving the comments from them the team re-worked on the draft to improve it in accordance with the comments and suggestions received. A revised form of second reading draft was put for discussion and revision to an interaction programme with experts. Meeting of the experts suggested some amendments and revision on the draft.

Minute revision and some addition with significant suggestions received in this course formed the report in present shape and contents.

2. Background Information

A. Political Context

Nepal, one of the members of United Nations, lies between India and China having its territory between 80 to 88 degree East Latitude and 26 to 30 degree North Longitude having three major topographical set-up, i.e., Mountain region, Hill region and Plain. Although Nepal had confronted immense loss in its territory with treaty of Sugauli on 28 November 1815, it always has been able to maintain territorial integrity and sovereignty. Nepal has had several ruling dynasties throughout its history¹. Titular ruling under feudalistic structures by Kings were continued till the overthrow of oligarchy of Rana regime in 1951 by popular movement.

During 1951 to 1961, there was exercise of unstable multiparty politics which finally had general elections for Parliament and the council of ministers. Then King Mahendra Bir Bikram Shah Dev through a coup-d'etat took power in 1962 and imposed a party-less dictatorial Kingship in the Name of *Panchayat* System. That system continued with suppression and agony though people had demonstrated their frustrations through various means of expression of discontentment and lasted up to 1990.

Jana Andolan, the popular movement, in 1990 established a relatively relaxed political climate with an outcome of a comparatively liberal Constitution of the Kingdom of Nepal 1990 with slight recognition of diverse character of Nepal and its people. The Constitution gave a framework of democratic system of governance, directive principles to undertake welfare programmes to protect the interests of different sections of pluralistic society, independent judiciary and a set of constitutional safeguards for citizens including right relating to criminal justice with an incorporation of protection against torture and other cruel, inhuman or degrading treatment.

However, the letters and spirits of the Constitution underwent otherwise and could not have been materialised winning the hearts of people. Unfortunately, the early years of multiparty democracy went on with high scale nepotism, corruptions, favouritism and unexpected single or bigger parties' domination throughout governance machinery. Political, ethnic, lingual minorities and other vulnerable sections of the society were subsided further. A wrong trend of technicality of managing majority developed in the political exercise through elections and other means and coexistence of varieties of ideologies, religions, racial, ethnic, lingual and cultural identities were not duly respected and protected.

Welfare of people declined and unhealthy economic environment escalated in the name of privatisation, exploitation of natural resources, amenities to the dignitaries and facilities to the high level masters of various sectors. Hope of common people to a social justice degenerated and faith toward state system fallen down. Formal justice system took a retributive approach with suppressive trend instead of taking restorative trend through corrective measures. Torture and other forms of ill-treatments worked as tools to repress the political opponents, suffer minorities and vulnerable groups to force them accept the ruling or dominant party's political impulses. This resulted in serious human rights violations in the name of administration of justice and maintaining law and order.

¹ ILRR (1999). *Analysis of Reform of the Criminal Justice System in Nepal*. Kathmandu: Centre for Legal Research and Resource Development (a report of study conducted by Institute for Legal Research and Resources (ILRR)).

The human rights situation in Nepal has deteriorated since the Communist Party of Nepal (CPN) (Maoist) launched a "people's war" in February 1996. Human rights abuses by both the security forces and members of the CPN (Maoist) have been reported during the nine-years of armed conflict, and have escalated since a ceasefire that had lasted seven months broke down in August 2003. In 2002 and 2003, Nepal recorded the highest number of "disappearances" of any country in the world. The CPN (Maoist) are also reported to have abducted hundreds of people, including large numbers of teachers and schoolchildren, for the purpose of "political education".

Military force of Nepal which is supposed to be only under command and accountable to the King, was asked to be involved in suppression of Maoist rebels by the then governments since 1996. However, the military force remained reluctant to be involved until emergency was declared and the exclusive power to use force and dominating role in the security and governance were rendered to them. Some severe destructive attacks on the part of Maoist over district headquarters like in Dang and Solukhumbu districts in November 2001 created a wave of fear within the government.

These shaking attacks caused then government to declare an emergency and to get military force involved in internal security management. Enforcement of Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2001 was brought as a tool to suppress Maoists and an emergency was declared for six months to pave ground for the involvement of Royal Nepalese Army in the ongoing violent conflict.

Suspension of most of the fundamental rights enshrined in Constitution and incapacitation of media in reporting human rights violations particularly by state security forces weakened the public voice and scrutiny on the violations. Dissolution of the House of Representatives and imposition of emergency for the second time after completion of six months eventually degraded Nepal's political system under an unseen military rule.

Human rights violations by state security forces escalated in masse. 'Within a period of one year during November 2001 to March 2003 six journalists were killed, three were made disappeared, 56 were detained prolonged with torture and maltreatments and 66 were detained illegally with infliction of torture'. This example is sufficient to gauge the severity of the misuse of powers by the security system under military command to other ordinary sections of society as the media community is supposed to be less affected by suppression and violations due to its separate status².

Existing social structure of Nepali society is dominated by traditional dogmatic values and governed by male dominated hierarchic frameworks. This leads to subordination of women in society; thus, women are victimized more in various forms of violence. They are neglected in required protection against torture as per their needs by status. Various forms of violence including witchcraft, domestic violence and other social forms of cruel, inhuman and degrading treatment are attributed to women due to this social structure.

B. Justice System

The Constitution 1990 has assumed balance of power between executive, legislature and judiciary and Part 11 of the Constitution authorises Courts as independent judiciary. But, the Executive, i.e., His Majesty's Government has control over the judiciary in many ways. One of the most significant hook against judiciary is financial control and control over the supply of human and other resources. The Courts are incapacitated by many factors.

The Constitution falls short to recognise the Supreme Court to have supervisory powers over the Military Court. Though Constitution maintains that Supreme Court has powers to supervise all rest of the courts including Special Court and tribunals. Nepal's Penal System, an exploratory study of penal system states:

The courts are denied jurisdiction in many kinds of cases in spite of Article 84 of Nepal's Constitution which says: "Powers relating to justice in Kingdom of Nepal shall be exercised by courts and other judicial institutions". At least 53 statutes concerning (non-state cases/err) offences vest the power of investigation, prosecution and adjudication with institutions other than courts. These statutes vest hief district officers (CDOs), district forest officers, land revenue officers, medical inspectors and other officials with such powers. In these types of cases the lack of separation of powers, with the same institutions having

² FNJ (2004). *Sankat Kalama Nepali Press (Nepali Press in Emergency)*; Kathmandu: Federation of Nepalese Journalists (FNJ).

*investigating, prosecuting and adjudicating responsibilities, often leads to justice being denied. Also, such officials are more vulnerable to political influences are often compelled to use their discretion in favour of a particular party*³.

Above 30 other statutes authorise executive to prescribe initial jurisdiction and in some cases appeal jurisdiction on its own as assured discretionary power of executive.

Criminal justice system is only a partial work for Courts. The Courts have jurisdiction in both civil and criminal cases. However, many of the criminal cases, which are associated with political issues and uneasy to follow fair trial standards and intended to arbitrarily treat are excluded from the jurisdiction of ordinary Courts and is given to Special Court or Tribunal. Such jurisdiction to Special Court or Tribunal that is expected to be more favourable to the government side and the issues of human rights violation would not come to be debated in the period of investigation or trial. Assessing the workload and shortcoming of Nepal's Penal System same source states: "Nepal's Criminal Justice System has suffered from low rates of conviction and long delays in holding trials. Nepal's courts are weighed down by thousands of unresolved family land partition cases"⁴.

Even the laws authorise the Courts to their competence, there is conservative orientation in the Courts that many of the judges and court personnel consider them as part of state organ and they are subject to the consideration of the executive. When a question of torture by police is raised before them, they consider that they and the police have similarities in discharging state function and use of force by police of state securities is considered as legitimate action under powers of maintaining law and order by state agencies. There are no good examples of cases that Courts take serious actions in disobey of their decision by executive personnel. Many of the judges have disregard over human rights instruments and standards, as they believe that human rights are alien concepts. Following paragraphs demonstrate the central tendency of the courts approach:

It is widely suspected that undue political pressure is often put out on judges to encourage them to deal either leniently or harshly with particular accused persons. On the other hand the courts are often accused of corruption and inefficiency. The general public who have faced the courts claim that case files are only processed smoothly if illegal payments are made to clerks. They consider the delay in passing a file from one office to another, or even from one desk to another in the same office, as a deliberate strategy to facilitate the demanding of bribes.

The lack of efficient filing systems means that files are often mislaid. The lack of photocopiers means that copies of case documents have often to be transcribed by hands as the documents are not allowed to be taken out of the court. Anyway, the courts suffer from a lack of budget for office supplies. Each year a number of prisoners are forced to serve more time in prison than their sentences due to delays in the courts reaching their decisions.

*The judiciary is responsible for applying the principles of international human rights laws at the national level for the protection of human rights. However, most of Nepal's judges are reluctant to do this partly because of unfamiliarity with it and also due to their conservative outlook. As with other institutions in Nepal, the judiciary reflects and tends to reinforce the patriarchal values and norms of Nepal's predominantly Hindu (Orthodox?) society*⁵.

C Historical Perspective of Torture in Nepal

Central values of enforcement of law in Nepal seem to be admixture of western and eastern legal system. National Code (cited as County Code in State report) found to be blending of some provisions from Napoleon Code and Kautilya's Arthashastra. Following values of Kautilya's were borrowed and modified during a long course of history till 1963:

Torture of Suspect

Only those about whom there is a strong presumption of guilt shall be torture to elicit a confession. The following shall not be tortured: those suspected of minor offences;

³ Stephen J Keeling & Rabindra Bhattarai (ed); **Nepal's Penal System: An Agenda For Change**; Kathmandu: CVICT, 2001, pp. 35-36

⁴ Ibid, p. 35

⁵ Ibid pp 35-36

minors; the aged; the sick; debilitated; those in drunken state; the insane; those suffering from hunger, thirst or fatigue after a long journey; those who have eaten to much and pregnant and women within a month of childbirth. Women shall be interrogated; if tortured, they shall be subjected to half the prescribed scale. Brahmins leaded in the Vedas and ascetics shall not be tortured, whatever the offence. Their guilt shall be established only by using secret agents.

A person can be tortured only on alternate days and only once on the permitted days. Torture shall not result in death; if it does so, the person responsible shall be punished. The following types of criminals may be tortured repeatedly, either individually or together: Recidivist. Anyone caught in the act of burglary or theft; anyone caught with stolen goods; anyone who tries to rub the treasury; or anyone who is sentenced by the king to death by torture.⁶

Above standards were applied in Lichhavi, Malla and post-Malla Period with slight modifications. If we look legal literature till 1963, we can find several sanctions that comprise several forms of torture. Promulgation of National Code in 1963 and of Act to Repeal Some Criminal Cases and Remitting Punishment 1964 aimed to outlaw some specific cruel and inhuman punishment in socio-legal context of Nepal.

Any discussion on penal reform and penal policy in Nepal would be incomplete without reference to the enactment of the Act to Repeal Some Criminal Cases and Remitting Punishment 2020 (1964AD). Consistent with the overall trend of adopting political principles of more liberal dispensation, this Act abrogated many inhumane and cruel punishments, which were historically prevalent, and till then, legally sanctioned. This Act abolished parochial, inhuman and cruel punishments such as: Saving of head (Mudne), Pricking with needles (Khopne), Applying hot metals on the body to leave permanent marks (Damal Garne), Degrading caste (Jata Patit Garne), Feeding faeces (Abhaksha Khuwaune), Removing sacred thread (Janai Jhikidine), Making leak soles of feet (Paintala Chataune), Repetence (Patiya wa Prayaschit Garaune), Forced Pilgrimage (Tirtha Ghumanunu Pame) and Banishing from village or town (Gaun wa Sahar Nikala Garne). The abolition of these punishments, I believe, was perhaps the most important event in the history of penal reform in Nepal. After the legislation of this Act, fine and imprisonment became the main modes of punishment in Nepal, as in many other countries. In addition, this Act started a trend in the liberalisation and simplification of the Nepalese penal policy.⁷

Even after this modification of trend of punishment, torturing people became a major device to get confession from a suspect or accused. Promulgation of National Code 1963 could not be able to replace its role in the already socialised torturous values. Thus, social psyche of Nepali society is full of those prior values and continued in practice in various forms of torture and other cruel, inhuman and degrading treatment.

Though National Code brought a provision to outlaw torture under detention by placing a Chapter of False Imprisonment in it, no impact would be created to bring change, as no reports are available that demonstrate a single case filed in courts under it and decided yet. A brief analysis is given in Article 2 below.

There is suffering mentality among law enforcement officials without being aware on the consequences on the one hand. And on the other, general values and understanding of the common people about torture and other forms of cruel and inhumane treatment as legal and legitimate punishment as it was transferred to their mind by social conception. These all played catalytic role to promote and continue the practice of torture.

3. Situation of Torture

Nepal is passing through a difficult time in its history. The situation of present conflict has affected our society, communities, the national economy, the quality of governance, and the basic human rights of the people. It has impacted upon the psychology of the common

⁶ Kautilya Arthashastra {4.8.14, 17-20, 25-27}, Cited in [(edited, translated, rearranged and introduced by L. N. Rangarajan), New Delhi: Penguin Book India Private Limited, 1992, pp 466-467]

⁷ Keshav Prasad Upadhyay, Chief Guest Speech, Penal Reform in Nepal (Report of Official Launch and Endorsment of the Plan of Action for Penal Reform in Nepal), Kathmandu: PRI & CVICT, 2000, p.6.

people, the children, women and aged alike.⁸ The human rights situation of Nepal is compounded by the prevalence widespread poverty, high illiteracy rates, caste based or gender based discrimination, ethnic injustices, bonded labor, trafficking of women and children, violence against those accused of allegedly practicing witchcraft, child labor, sexual harassment and domestic violence. In general the protection and guarantees to the rights to life, freedom of movement, freedom of expression, and more importantly right to food, shelter, education and health and medical services are weak⁹.

Since 1996 and the outbreak of the "People's War", the practice of torture in Nepal has intensified¹⁰. A recently published report of Amnesty International on disappearance reads:

"During the last 6 years of armed conflict Nepal has been characterized by wide spread arbitrary arrests, unacknowledged detentions and disappearances at the hand of security forces. Since 1998, 622 cases of disappearance have been reported... while local human rights groups have recorded 1264 disappearances since the conflict began in 1996. Hundreds of people have been abducted by the CPN (Maoist)."¹¹

Some of the most widely used forms of torture are beating on soles of feet (Falanga), random beating, electric shocks, being hooded or blindfolded, rolling a weighed stick along the victim's thighs causing muscle damage (belana), burning with cigarette and forcing the detainee to assure awakened and painful posture (e.g. chicken posture). Animals, insects, even needles are also commonly applied as tools of torture. Other forms of torture applied to harm the victim psychologically include threats, deprivation of food, and drink, forcing to consume excreta, forcing to remove 'sacred thread of the upper caste detainees, long-term isolation, confinement in a dark room and inflicting loud noise.

A study jointly conducted by National Human Rights Commission and CVICT Nepal has shown that torture still exists in Nepal despite the constitutional guarantee and ratification or accession of several international human rights treaties including the ICCPR and CAT and the report has pointed out the prevalence of impunity.¹² As it is evident that torture in Nepal is routinely and systemically practiced throughout time and there is no proper documentation and investigation of torture events in the country from government side.¹³

Nepal is in a transition of values and there exist the conflict between ideas of traditional orientations and human rights principles. The practice is dominantly governed by traditional values with orthodox aptitudes.

The insulation of human rights values in society, especially, respect on dignity and practice of humanity is very much weaker though there have been many efforts by human rights workers. There is great scarcity of political will of the government to fight against the routine and systematic practice of torture as it has no priority to develop a scientific crime investigation with necessary equipments, technologies and skilled human resources.

The information contained in the second part of this report, therefore, is not able to sketch out the overall scenario of the torture practiced during reported period. However, it gives a glimpse of the severity of the problem of torture and other cruel, inhuman and degrading treatment and punishment and the failure as well as lack of desire to address the problem by the government of Nepal.

⁸ Bipin Adhikari ed., Conflict Human Rights and Peace Challenges Before Nepal, NHRC, 2003, p.i.

⁹ Bipin Adhikari, "The Context of Conflict and Human Rights Violations in Nepal: Some Preliminary Observations" Published in Conflict Human Rights and Peace Challenges Before Nepal edited by Bipin Adhikari, NHRC 2003., p. 29

¹⁰ For further information see the Report of UN Special Rapporteur on extra judicial, summary or arbitrary executions on her Mission to Nepal, UN Doc. E/CN.4/2001/9/Add.2, 9 August 2000, paragraphs 7 et seq. See also Amnesty International, "Nepal: A Spiraling Human Rights Crisis", ASA 31/016/2002, 4 April 2002, Chapter 2.

¹¹ A report published by Amnesty International "Nepal Escalating disappearances amid a culture of impunity" p. 3. (AI Index: ASA 31/155/2004)

¹² NHRC, Study on Insurgency Related Torture and Disability, 2003, pp.1,2.

¹³ See Amnesty International Report, 2000, p. 177,188, Amnesty International Report 2001,p 179, Amnesty International Report, 2002, p. 182.

4. Internal Armed Conflict and Torture

Despite its prohibition by international law, with some noted controversies, torture exists in its various forms and its ugly tentacles have left no place uncharted, especially it has a dominant presence in the chambers of law enforcing authorities in world arena. Nepal is not an exception. Nepalese state authorities responsible for implementation of law have been plagued by a sense that they are 'historically and legally privileged' to inflict torture against ordinary people to carry their duty. To make the situation worse, ongoing violent conflict in the name 'people's war' by CPN (Maoist) and counter violence by state security forces 'to quell the violence' has fueled incidents of torture to hit the utmost point of the spiral. "An outbreak of armed conflict is often accompanied by a weakening or dismantling of the safeguards of and institutions for preventing torture and other human rights violations"¹⁴

To follow CVICT data on insurgency related torture cases, figures for those tortured in Nepal have doubled each year since the start of a Maoist uprising in 1996. It displays that more than 1,800 cases have been referred in the year. Over the past eight years, 17,000 cases of torture have been brought before the organization. The organization, working for victims of torture, maintains that these figures are just the tip of the iceberg. It has listed 38 varieties of tortures commonly used in Nepal. Most victims were poor and often wrongly accused by the authorities of being Maoists. Many such cases prompted previously non-political victims to join the rebels. Maoists have also taken up torture themselves and regularly broke people's arms and legs.

The armed conflict has primarily affected the country's civilian population because security authorities have directed extreme military force at the civilian population rather than against Maoist rebel units. Under international law, Nepal's state-sponsored militias are state agents and therefore must abide by international human rights and humanitarian law. The government of Nepal is ultimately responsible for their actions.

Armed conflicts, and especially internal conflicts, are the breeding ground for mass violations of human rights. Wherever armed conflicts erupt they are invariably characterized by grave abuses on a mass scale including unlawful killings, rape and other sexual violence, torture, and the denial of the most fundamental economic and social rights. The trend of human rights violation and infliction of torture is widespread and in inclination to the severity. So called armed rebel became a pretext for systematic practice of torture by state authorities.

According to a report published by National Human Rights Commission based on a survey in the districts then considered severely affected by Maoist activities namely Jajarkot, Rolpa, Rukum and Salyan, the maximum number of victims (25%) reported to have received torture in between April 1999 and March 2000. About 59% of the victims were charged of being Maoists.¹⁵

Type of Perpetrator

Torturer	Frequency	Percentage
Police Officials	399	67.17
Maoist	176	29.63
Police and Maoists	14	2.36
Forest Officials	3	0.51
Army	1	0.17
Police and Army	1	0.17

Source: Study on Insurgency Related Torture and Disability, NHRC, 2003, P.18

Torture based on Date

Date of Torture	Frequency	Percentage
<i>Before April 1996</i>	125	21.04
<i>April 1996 - March 1997</i>	52	8.75
<i>April 1997-March 1998</i>	91	15.32

¹⁴ End Impunity: Justice for the Victims of Torture, Amnesty International, London, 2001.

¹⁵ Study on Insurgency Related Torture and Disability, NHRC, 2003, P.15

April 1998-March 1999	131	22.05
April 1999-March 2000	148	24.92
April 2000-March 2001	103	17.34
April 2001-September 2001	42	7.07

Source: Study on Insurgency Related Torture and Disability, NHRC, 2003, P.18

A comprehensive study on the criminal justice system released in 1999, "Analysis and Reforms of the Criminal Justice System in Nepal", reports incidents of torture to be widespread: 67% of respondents complained various kinds of torture during the police custody. Verbal abuse, compulsory and random hand-cuffing, hand-cuffing with a long iron chain, unhygienic custodial rooms, and denial of permission to receive visits were among complaints. Many of those tortured are arrested on accusations of being Maoist rebels. Many people are detained even after being given an order for release by the courts.

Above statistics and study reports displays an increasing trend of practice of torture. The protracted internal armed conflict in the land has shown the human price of allowing torture to be committed with impunity. Many thousands/hundreds of atrocities have been committed by both the rebel and government forces during these nine years of armed conflict being called to account.

Tortured to be mad

Kishori Raya Yadav, a resident of Phulkaha VDC-1 being detained at the district police office Mahottarai, has lost his mental balance due to torture reached on him. He was taken into custody on 7 November 2003 from Gaushala bazaar of the district by the security forces in the charge of being a Maoist; however, he was given arrest slip to effective from 23 November and was sent to prison. According to the eyewitness and an inmate at the prison at Jaleshwar, Ram Ashish Shah, who hails from Yadav's locality, the victim suffered severe blows from the police personnel on his head and feet with stick. Yadav now shivers, has lost his sleep, avoids contact with any person and is voiceless. Police is telling about Yadav that his relatives are trying to treat him through a shaman as 'some evil spirit has disturbed Yadav'. Yadav is CPN-UML secretary of the village committee.

Source:INSEC

A major cause of the persistence of widespread torture in the countries like Nepal is the failure or unwillingness of leading government officials and representatives to acknowledge that torture even exists, let alone that it needs to be vigorously tackled. The governments paid no accountability to the people considering them as source power, rather they considered people as a tool for their political playing and considered as distortable matters of disposal under their positional power. The Torture Compensation Act has not defined torture as a crime, and thus impunity prevails: owing to the absence of deterrents, repetitions of incidents are commonplace, even in the capital city. No judicial inquiries of alleged incidents are conducted.

According to INSEC, state has disappeared a number of 1,011 persons during the period of 13 February 1996 to 13 December 2004. The act of disappearance is more than a case of torture and an indication of potentiality and gravity of torture. A number of decisions by Supreme and Appellate Courts on habeas corpus writs ordering law enforcing authorities to release illegal detainees have been ignored. It also reflects increased torture to those detainees.

The Supreme Court on February 11, 2004 directed the prime minister's office as well as council of ministers and attendant agencies to adhere to constitutional provisions and respect human rights standards¹⁶. The court also warned the government bodies to not present 'lies' before the courts. The executive failed to follow the order.

The Maoist insurgents, in their attempt to overthrow the government and replace it with an autocratic communist state, have destroyed schools and infrastructure, tortured and killed civilians, looted food from humanitarian aid projects, forcibly conscripted children, and assassinated government officials.

Maoists are reported to have been torturing political opponents and suspected 'informers'. Maoists' activities of torture and harassment are known to have picked up momentum in recent

¹⁶ The Himalayan Times, February 12, 2004

months. However, it is increasingly becoming clear that villagers are becoming the most victimized section of the society in this conflict.¹⁷

Falling within the parameters of seemingly non-political activities, acts of using force of all sorts has been the daily course of their 'revolution'. To believe the victims of the rebels' perpetration, almost of the cases have been committed to seek favor and support for their activities.

On September 3, 2003, the Maoist rebels in Sindhupalchowk killed journalist Gyanendra Khadka (reporter to Rastriya Samachar Samiti) after abduction. He had his hands back and tied onto a volleyball post and was slain through the back of his neck holding his wife and relatives see the cruelty. He was charged of 'spying' against them.

Similarly, Maoists have abducted thousands of people on the course of the armed conflict. They inflict torture to the abductees in most of the cases. Many of them have been killed. According to an information provided by INSEC, the rebels abducted 22,165 persons from 1996 to 13 December 2004. The data is silent on how many of them have been released.

Victims of torture and ill-treatment have a right to see justice done; to have the truth about what happened to them acknowledged and to receive compensation and other reparations for the harm they have suffered. Society as a whole also has a right to know the truth.

The complexity, fear and unpredictability of situation caused by the prevalent ongoing armed conflicts has induced psycho-social problems and intensified the worries among the victims and their family.

After several months, year, or lifetime if untreated, the victims may still experience anxiety, panic, irritability, rage, insomnia, nightmares, memory difficulties, and lack of initiative, apathy, social withdrawal, helplessness, affective lameness, and flashbacks of the traumatic event. Repeatedly witnessing scene of violent incidents revive their psychological problems and there is a great danger of increase in social violence that promotes different forms of cruel, inhuman and degrading treatments and establishes a vicious circle of violence in community level.

¹⁷ Study on Insurgency Related Torture and Disability, NHRC, 2003, P. 1

Part II
Specific Information Relating to the
Implementation of
Articles 1 to 16 of the Convention

Article –1

Definition of Torture

The state report itself has recognized that the definition of torture in the Torture Compensation Act 1996 is not wide enough as of Article 1 of the Convention. The definition of torture in TCA, in particular, lacks to include the ideas of:

- Any act by which severe pain or suffering, intentionally inflicted,
- For the purposes such as obtaining information or confession, punishing him/her for an act s/he or a third person committed or is suspected of having committed, or intimidating or coercing him/her.
- Such an act committed by or with the consent or acquiescence of a public official or other person acting in an official capacity.

TCA was promulgated after the Committee considered Nepal's initial report. Despite Committee's recommendation to incorporate wider definition as required by Article 1 of the Convention, the State brought weaker definition to skip out from its obligation and to keep torture routine under orders from superior to subordinate employees with the help of definitional ambiguity.¹⁸

In paragraph 19 of the state report it has mentioned that the definition in the Convention is applicable to Nepal as per Nepal Treaty Act 1991. However, if there is already a definition in national legislation, the Courts mostly take those and do not take the definition from the Convention and render justice to the victims with the help of spirit of the Convention. It is evident that no Court has yet referred the definition from the Convention though the state report claimed that Convention holds authority in case of incompatibility of the national provision.

Commission of specified acts anywhere constitutes torture. However, in a case a district court has misleadingly interpreted that beating a suspect outside police custody in the premises of police would not constitute torture and could be considered as simple assault (see box). These types of faulty interpretations are the result of unclear definition.

Sita Ram Yadav's Case

On 11 October 1998 Sita Ram Yadav and others were discussing about a case in Babiya Police Post Sunsari. Meanwhile, one of the accused of the incident escaped from the police post. Police charged Sita Ram that he helped the accused escape. Then Police verbally abused him and put in the custody and started beating by boots and lathi randomly on his body. He was released in the evening after severe torture.

Under TCA, Mr. Yadav filed a case in Sunsari District Court demanding compensation of Rs. 100000.00 and departmental action against the perpetrator an A.S.I.. The District Court in July 1999 held that " It is not found that Mr. Yadav was in police custody. In some minor dispute Police has beaten plaintiff in open place in front of all people therefore it can not be named as torture." Against this verdict Mr. Yadav appealed in the Appellate Court Biratnagar. The Appellate Court upheld the verdict of the District Court in 4 September 2000.

Source: CVICT Record

Recommendations

The definition of torture in TCA should be reframed in consistent with the words and spirit of Convention's definition.

¹⁸ Para 142 and 146 of CAT A/49/44. Concluding observation of the Committee against Torture: Nepal, 12/06/94

Article – 2**Legislative, Institutional and Judicial Measures Taken to Prevent Torture****Legislative Measures:**

State report has enlisted 15 statutory laws as legislative initiatives to prevent torture within the reported periods. The information itself is misleading as only TCA 1996 and HRC Act 1997 were the legislations enacted in reported period among them.

Among enlisted Acts, three of them are seriously against the prevention of torture, rather they are instruments to intensify and institutionalize torture as routine practice by state security agencies. They are fully inconsistent with international human rights norms, endangers fair trial proceeding and lead to use of torture and immunize the perpetrators. Following table demonstrates their inconsistencies with provisions of international human rights instruments and the Constitution.

Terrorist and Disruptive Activities (Control and Punishment) Act, (TADA) 2002

State report (Para 21) has mentioned that TADA is one of the legislative measures that government has taken to combat torture in the country. But the report is silent on how this act is related to combat torture. At first the Terrorist and Disruptive Activities Ordinance was promulgated as one of the emergency measures in November 2001 giving the security forces the powers to arrest and detention suspects under a preventive detention. With enforcement of the Ordinance, most of the fundamental rights under Constitution were suspended and state of emergency was imposed.

Terrorist and Disruptive Activities (Control and Punishment) Act 2002 (TADA) replaced this Ordinance on 10 April 2002. The TADA gives security forces the power to arrest without warrant and to detain suspects for up to 60 days in a police custody for the purpose of investigation, and for up to 90 days in a place "suitable for human beings" in preventive detention, without being presented before a court.

But the implementation of this Act has shown that the discretionary power given by this Act has widely been misused and illegal detention by security forces is widespread.¹⁹ On 13 October 2004 HMG Nepal promulgated a more stringent version of Terrorist and Disruptive (Control and Punishment) Ordinance (TADO) 2004, which gives security forces power to arrest without arrest warrant and to detain suspect for up to one year in a place "suitable for human being" in preventive detention, without being presented before a court. This has increased the chance of disappearance of people and torture to them.

Terrorist and Disruptive Activities (Control and Punishment) Act 2002		
Section of the Act	Standards/Provisions	Ground of Inconsistency
5: Special authority to prevent terrorist and disruptive activities: Whatsoever provided for in prevailing laws, an order can be issued to carry out any or all of the following acts through out or in any part of the Kingdom by His Majesty's Government and within own jurisdiction by the Security Officer; Arresting any suspected person involved in terrorist and disruptive	ICCPR 9,17 Const. 12,15,22 BPUFLEO Article 4, 7	The provisions empower the security with unlimited authority to deprive citizens from enjoyment of liberty. It leaves loophole for possible arbitrary arrest or detention Article 15 of the constitution requires sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal. Such threats should be explicitly expressed too. However, the provisions provide excessive authority to security personnel for arbitrary interference with anyone's privacy, family home or

¹⁹ For detail see Amnesty International, Nepal Escalating "disappearance amid culture of impunity, 2004, AI Index: ASA 31/155/2004.

<p>activities with sufficient and reasonable grounds and give a notice of arrest as soon as possible,</p> <p>Carrying out a search with giving a notice at any time on any person's house, shop, store, vehicle or any other place if there is a suspicion that unlawful weapons, arms and ammunition, bomb or explosive materials have been kept or any person suspected of having relation with the terrorist has been hiding; and issue receipts of goods recovered, if any in the course of the search.</p> <p>Carrying out a search of anyone's body and belongings with him/her or means or the vehicle at any place or on the way for the purpose of preventing terrorist and disruptive activities.</p> <p>Using necessary force or weapons if any resistance is put while arresting as per Clause (a) or carrying out a search as per Clause (b) and (c) or while taking any other action.</p> <p>Using necessary force or weapons if a situation appears that a person who is carrying out or who has carried out terrorist and disruptive act would run away or would not get arrested.</p> <p>Using necessary force or weapons to prevent harm, risk or other damages on the hostages while rescuing them from the person committing terrorist and disruptive activities from the forcibly captured vehicle or airplane or ship or any other vehicle or rescuing such vehicle or airplane or ship or any other vehicle.</p> <p>Using necessary force and weapons if any individual or group attacks with or without arms, any security personnel involved</p>		<p>correspondence without specifying grounds and condition explicitly.</p> <p>Law enforcement officials in carrying out their duty, as far as possible, apply non-violent means before resorting to the use of force and firearms. Firearms may be used only if other means remain ineffective, however, the provisions are silent about the prescription of non-violent means and measures.</p>
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<p>in discharging the duty or assigned for specific works. Using necessary force or weapons if any individual or group with arms threatens or attempts to threaten any security personnel on duty with a motive of causing physical harm to him/her, Use necessary force or weapons if any individual or group attacks with the motive of physically harming persons who are to be provided security by security personnel; or the common people who are being provided security by security personnel; or employees deputed on government duties; or government's property or security personnel.</p>		
<p>9: Right to keep in preventive detention: The Security Officer may issue an order to keep a person in a preventive detention at humanly place for up to 90 days if there is reasonable ground to believe that s/he required to be prevented from committing acts that may cause terrorist and disruptive activities.</p>	<p>ICCPR 9, Const. 15</p>	<p>Preventative detention is considered as direct, un-commendable and unpleasant interruption over personal liberty. Preventive detention should be for the shortest possible period for potential occurrence of violence and it should be always balanced by sound, sufficient and redressing compensation. However, this provision attributes powers to authority to deprive common people and from their liberty and imposes unrestrained limitation through long period detention without repressible remedy and any form of compensation. Until there is sufficient ground of existence of an immediate threat to the sovereignty, integrity or law it is net necessary of preventive detention. The rules provide that its provisions shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice including those all either suspected, accused or sentenced.</p>
<p>11: Keeping in custody during the trial: Considering the seriousness of the offence, accused charged under this Act, normally, shall be tried keeping him/her in custody.</p>	<p>ICCPR 14, Cons. 14 SMRNCM2.1</p>	<p>Imprisonment should be taken as last resort where other alternatives fail to serve the purpose of justice. It is against the general principle of fair trial. The provision permits detention with unreasonable delay.</p>
<p>13: Provision on monitoring and coordination: A person or any other person on his/her behalf, who has been hurt by the actions of the authorized</p>	<p>ICCPR 14 BPIJ 4,5,6</p>	<p>The prescribed provision does not guarantee fair proceedings as it is not guaranteed or prescribed by the law. This may lead to arbitrariness of the committee.</p>

<p>officer under this Act while the exercise of powers in accordance with this Act in course of investigation of terrorist and disruptive offence, may file a petition to the Monitoring Committee consisting of following Chairperson and Members:</p> <ul style="list-style-type: none"> a) Person prescribed by His Majesty's Government from among the persons retired from the post of Judge of Supreme Court - Chairperson b) Secretary, Defense Ministry - Member c) Secretary, Ministry of Home Affairs – Member d) Secretary, Ministry of Law, Justice and Parliamentary Affairs – Member e) Deputy Attorney General, Office of the Attorney General of Kingdom of Nepal - Member <p>The Monitoring Committee shall manage its rules of procedure on its own.</p> <p>If the person submitting the petition in accordance with subsection (i) is found to be aggrieved through the examination by the Monitoring Committee, the committee shall provide consultation to the concerned Agency and also recommend His Majesty's Government the suggestion on the observed problems and solutions thereof.</p> <ol style="list-style-type: none"> 1. The Monitoring Committee, pursuant to subsection (iii) shall inform the Committee on State Affairs in the House of Representatives about its performances and proceedings. 2. For preventing and controlling the terrorist and disruptive activities within the jurisdiction, there shall be a Coordination Committee to coordinate between Royal Nepal Army, 		
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<p>Nepal Police, Armed Police, National Intelligence and other necessary government agencies under the convener-ship of Regional Administrator or Chief District Officer.</p> <p>The Coordination Committee pursuant to Subsection 5 shall manage its rules of procedure on its own.</p>		
<p>15: Adjudication authority and Appeal:</p> <ol style="list-style-type: none"> 1. The authority to hear the cases of crimes under this ordinance shall be with the court constituted or designated by His Majesty's Government by publishing a notice in the Nepal Gazette. 2. The court mentioned in subsection (1) shall adopt the working procedure laid down in the 1974 Special Court Act while hearing and disposing of cases under this Act. <p>An appeal to the decision or final order of the Court pursuant to Subsection (1) shall be made to Supreme Court.</p>	<p>UDHR 10, ICCPR 14, CCLEO 1 Const. 84,85,86</p>	<p>The authority to exercise the power of imposing any kind of sanction should be prescribed by law itself not by executive's discretion in prescribing it. Law enforcement officials should be accountable for their conduct under lawful authority. There is room of misuse of power delegation with biasness of executive. Sentencing should be from independent, competent and impartial tribunal established by the law not from administrative official.</p>
<p>19: Provision regarding Medical Expenses and Compensation :</p> <ol style="list-style-type: none"> 1. His Majesty's Government shall provide reasonable medical expenses or compensation if the security personnel or police deputed in controlling and investigating terrorist and disruptive activities is killed or sustains bodily mutilation. 2. His Majesty's Government shall make the arrangement of required medical treatment for the person affected by or fallen victim of the terrorist and disruptive activities; and about the relief facilities to be provided to such person. 3. HMG shall provide a reasonable compensation to the dependent family of innocent common person if one is killed as a result of activities of a person indulged in terrorist and disruptive acts, or of security personnel. 	<p>CAT 14, ICCPR 3</p>	<p>The provision provides compensation only for the death due to the action of security personnel. It does not provide for unnecessary detention, or arrest. It has ignored other injury, damage or devastation.</p> <p>Presumption of death of innocent also refers to presumption of conforming others as terrorist automatically and this provision does not mention about investigation of incident for identifying whether the deceased was innocent.</p>

<p>In case it is proved that this Act has been applied with malafide intentions, the aggrieved party shall be paid a reasonable compensation in the course of judgment on the concerned case.</p>		
<p>20: Protection on good intention: No officer or individual shall be liable to punishment for any act or work performed or attempted to be performed by him with bonafide intentions under this Act or the Rules framed hereunder.</p>	<p>Const. 11, 14.1& 2, 84 ICCPR 2, 14</p>	<p>Mens rea is taken into consideration by the courts and actus reus should be also taken into account in distinguishing the committal is act, omission or status affairs by the court while hearing the case considering the merit of the case. It is general principle of criminal justice, which is impliedly recognized by the stated instruments. This provision exempts the person to be accused and prosecuted in the name of good faith without examining the faith was either good or bad.</p>
<p align="center">Some Public (Crime and Punishment) Act 1970</p>		
<p align="center">Section of the Act</p>	<p align="center">Standards/ Provisions</p>	<p align="center">Ground of Inconsistency</p>
<p>3: Authority to Arrest: 4. Police personnel may arrest any person from the spot if found committing the crime under section 2. 5. If reliable information is received by the means of one's complaint or if there is reasonable situation to suspect and investigated accordingly Chief Police Officer of local police post or station up to Sub-inspector level may issue arrest warrant. But, arrested person should be produced before the judicial authority within 24 hours and such person should not be kept in custody more than that period except by the order of judicial authority.</p>	<p>ICCPR 14, 26</p>	<p>The provisions authorise the police either to arrest persons without issued warrant or to by issuing warrant if s/he believe so, however, the essential guarantees required in such condition to protect rights of subjected person is ignored completely. Furthermore, warrant is a form of writ issued by concerned Court of Law, however, the provisions authorise junior police personnel to issue warrant which is completely against this fundamental principle of warrant.</p>
<p align="center">Police Act 1955</p>		
<p>9: Appointment, Promotion, Dismissal, and Departmental Action for Police: (4) The prescribed officer may suspend, dismiss, demote or decrease salary, or take any necessary actions prescribed hereunder to junior post police for negligence or carelessness in duty; or fore any activities to make oneself unfit for performing any duty; or for the breach of discipline; or for any misconduct. (b) Detention not exceeding to 15 days in quarter with or without</p>	<p>ICCPR 2,7,14,26 CAT 1, 16 Const 11, 14.4 HRC gen.com 20.5 MSRTP 31</p>	<p>This provision provides physical punishment of fatigue or detention up to 15 days without maintaining due records to the junior police personnel but not for officer level. As corporal punishment constitutes torture it is prohibited form of punishment by these instruments.</p>

<p>additional fatigue duty, or punishment exercise.</p> <p>Provided that, no punishment prescribed in this Clause shall be inflicted to any officer.</p>		
<p>15: Duty of Police:</p> <p>(2) To achieve the objectives specified above in Clause (a) to (e), it shall be the power of the officer up to Sub-Inspector to enter without warrant or inspect any place where drugs and alcohol is traded or consumed; store, hotel, lodge, restaurant, or place of gambling, or any place where ordinarily bad people assemblage.</p> <p>(3) If any officer enters without warrant or inspect pursuant to Subsection (2), the Chief District Officer shall have to be notified in written as soon as possible with reasons thereof.</p>	ICCPR 14	The provisions of the Act deny the right to fair pre-trial, the right to be informed promptly and in detail in a language which s/he understands and the nature and cause of the charge against him/her. Reasonable time should be given to such persons for his/her defence.
<p>16: Power of Chief District Officer to issue Warrant etc.</p> <p>Any police officer, notifying the information obtained in the course of his duty, may submit report for issuing warrant, search warrant or any other notice in the name of any person committed offence; or have doubt of committed offence; or who is about to commit an offence, and the Chief District Officer may issue such warrant, summon or notice if there is no clear provision of any authority or office to issue such orders in current laws. If there is the provision of issuing such warrant, search warrant, summon or any other order by the any Office or Court, the police officer shall have to submit the report to the concerned office or Court.</p>	ICCPR 14.5	Right to appeal is one of the basic standards of fair trial for post trial phase. However, this provision denies the right to appeal and blocks the path for the review from higher tribunal.
<p>30: Compensation to the aggrieved by the misconduct of inhabitants ...</p> <p>(4) The amount of compensation, or any order pursuant to Subsection (2) shall be final, except revised by His Majesty's Government or officer appointed thereof.</p>	ICCPR 14.5	Right to appeal is one of the basic standards of fair trial for post trial phase. However, this provision denies the right to appeal before an impartial, independent and competent tribunal established by law and blocks the path for reviewing from higher tribunal. In addition, it offers unlimited optional authority to executive to prescribe for review.

<p>33 a: Severe Offences: Police shall be liable for life imprisonment or imprisonment ranging 14 years; or fine equal to the salary of 3 years, or both for the following offences</p> <ol style="list-style-type: none"> 3. For armed revolt in police force, or for assimilation in revolt, or for provoking for revolt, or for attempt or conspiracy thereof 4. For the aloofness to prevent the revolt in his presence; or for the attempt or act of demoralizing persons bearing the duty by the sense of nationalism or monarchism 5. For not notifying the senior officers timely, despite the knowledge of intention, conspiracy or attempt of revolt. 6. 7. For assisting the attacker by handing over the police station or post; or the arms and ammunitions or governmental property or other documents in procession. 8. For intentionally intimidating or terrifying the force or common people at the time of attack or encounter, for publicizing the false information of danger with the intention of weakening the confidence and to horrify. 	<p>UDHR 10 ICCPR 9,14, 15.1, SMRTP, SMRNCM, Const.14 and 84</p>	<p>These provisions have given the Police Special Court and Police Personnel a wide range of discretion in offences of grievous nature as well as disciplinary offences with heavier sanction to the accused. However, the law in nowhere mentions about the fair proceedings ensuring the rights of the alleged including right to counsel, presumption of innocence, freedom from torture etc. There is absolute absence of procedural guarantees. There is neither guideline available for using discretion of sentence nor there are prescribed upper and lower limits of the sentence. The law says nowhere that Nepal law requires to be followed duly for investigation, prosecution, trial and execution of the court decision. Proportion and balance between the nature and gravity of the committal and the sentence seems to be absolutely irrelevant factors for this law. There is absolute absence of right to appeal, right to public hearing, right to compensation in case of miscarriage of justice etc. Right to judicial review and legal aid is totally ignored. Compelling provision to be testified, acceptance of capital punishment etc. shows the extremity of arbitrariness. All the provisions suggest for imprisonment and the alternatives are rear.</p>
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<p>33 b: Other Severe Offences: Police personnel shall be liable for the imprisonment ranging to 10 years; fine equal to salary of 2 years; or both for the following offences:</p> <ul style="list-style-type: none"> (a) For any act of sedition by writing, speech or symbol, or by any other means to His Majesty's Government or any act of His Majesty's Government; or any act of jeopardize sovereignty and integrity of kingdom of Nepal by hatred, defamation, or contempt; or attempt thereof (b) For any act of looting in neighboring countries, or preparation thereof, assisting someone or giving information for that or contacting that person, (c) For fleeing cowardly from the post, station, guard, picket, troop or patrol; or institution; or office; where he is appointed, or from the places under his responsibility, or from the places he had to protect, at the time of encounter with attackers, robbers, smugglers and hooligans; or with the doubt of encounter, (d) For the selling of government's or others' arms and ammunitions under one's possession (e) For leaving one's post, station, guard, picket, troop, patrol, institution, or office in search of looting (f) For use of illegal force, or attempt thereof or threatening against senior officer on duty or off duty, despite the knowledge of his post or presence of reasons to believe, (g) For not submitting certificate of appointment; governments' or others arms and ammunitions, machine, tool, goods, cash, commodities in one's possession or adequate details thereof, at the time of order of senior officer, or at the time of termination of appointment (h) For changing place or domicile with the intention of looting; or for looting, damaging, destroying any property by any means (i) For showing cowardice while performing duty 		
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<p>34: Other Offences: Police shall be liable for imprisonment ranging to five years; or for fine equal to salary of one year; or both for the following offences:</p> <ul style="list-style-type: none"> (a) For damaging, destroying, losing or misusing government or other's mechanism, tool, good, uniform, badge, belt, medal, cash commodity, vehicle and fuel; and for taking or giving others with malafide intention, (b) For attacking, dishonoring or any offence using force to the person bringing ration or other stuffs in camp or for misuse of power in any place, (c) For disobeying legal orders of the senior police, (d) If flees from the police force, (e) If sleeps in the duty of sentry or leaves before the arrival of regular relieve without permission, (f) If leaves guarding duty, picket, group or patrol before arrival of regular relieve, or without permission, (g) If resigns without permission of the officer having authority of appointing him, or discontinue to bear the responsibility of post, (h) If batters or coerces sentry; or attempts for that, (i) If denies to take over the prisoners or any person handed over according to rule, while performing duty on guard, picket or patrol; if releases any prisoner or other person from his responsibility without proper authority or assists to flee by negligence, (j) If leaves the place of arrest or captivity at the time of arrest or captivation prior the order of authority, (k) If makes excuses or pretends physical weakness, (l) If intentionally submits the false list or report of situation and number of person in one's responsibility or possession; or of cash, arms and ammunitions, commodities, cloths, or other goods of those people or of His Majesty's Government or of any police or anybody come for joining police force; or if denies to prepare or avoids to submit list or records of abovementioned items, with malafide intention or intentionally with negligence, (m) If participates, or makes speech, slogan or statements in any meeting, procession, exhibition organized with political objectives <p>If intimidates or unduly troubles others with the power of his post; or damages others' property,</p>		
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<p>36: Establishment and Constitution of Special Police Court:</p> <p>(1) To hear and decide the cases of offence under this chapter following Special Police Courts shall be constituted for following police: District Police Special Court for policeman to Sub-Inspector; Regional Police Special Court for Inspector to Deputy Superintendent of Police; Central Police Special Court for superintendent to other senior officers.</p> <p>(2) His Majesty's Government, Ministry of Home Affairs shall constitute the District Police Special Court, Regional Police Special Court, Central Police Special Court as per the requirement and each court shall be comprised of 3 members, with the chairmanship of officer of judicial service, and one police officer as member; and if the person conflicted is police officer, no junior officer than him shall be included in that Special Court.</p>	<p>ICCPR 14 BPIJ 5, 10 Const. 84,85,86</p>	<p>Any court should be independent, impartial, competent, and established by law that follows prescribed procedures by the statute. Impartial, competent and independent tribunal established by statutes with specified qualifications, jurisdiction, tenure, and functional independency may only pass criminal sanction. There is a genuine concern about the professional training and competency of the persons acting as judge in military court.</p>
<p>36a: Separate Police Special Court shall be constituted: Notwithstanding anything contained in Section 36, His Majesty's Government may constitute a separate Police Special Court by publishing notice in Nepal gazette to hear and decide any offence under this chapter, where offence is committed by the association of any officer of the post of Deputy Superintendent of Police or officer of senior post than that; and police of same or junior post.</p>	<p>ICCPR 14, 26, BPIJ 5, 10 Const. 85, 86</p>	<p>This provision leaves powers to the executive to constitute separate court on its own displacing the Special Police Court to adjudicate cases. Only independent, impartial and competent tribunal established by law with due statutory procedure should pass sentence. In addition, any tribunal may not be created to replace other competent judicial tribunal Any criminal case should be heard by ordinary court or tribunal established by the law. Jurisdiction should be prescribed by law not by executive.</p>
<p>36 b : Appeal: Person not satisfied with the decision of Police Special Court pursuant to Section 36, may appeal to the one level up Police Special Court within thirty-five days from the date of the decision. Appeal to the decision of Central Police Special Court pursuant to Subsection (2) of Section (36); and of Police Special Court pursuant to Section (36)(a), shall be heard by His Majesty's Government.</p>	<p>ICCPR 14.5, BPIJ 5, 10</p>	<p>Right to appeal consists a component of judicial scrutiny at post trial phase. However, this provision denies the right to appeal as right to judicial scrutiny by higher competent judicial authority under judicial branch of the government. Awarding power to executive to hear appeal would amount violation of principle of separation of power.</p>
<p>36 c: Procedure of the Police Special Court: 1. Police Special Court constituted</p>	<p>ICCPR 14, BPIJ 5</p>	<p>Determination of rights and obligations for the violation of law in criminal manner is absolutely a formal legal</p>

<p>pursuant to this Act shall regulate its working procedure itself. Case shall have to be initiated for the offences under this Chapter</p>		<p>process. Rule of procedure for such proceeding should be determined only by statutory arrangements and be public prior to their enforcement. This provision allows Police Special Court to formulate rule of procedure on their own incompatibly with set norms.</p>
<p>37 : No Accusation for the Action Taken with Bonafide Intentions: The Chief District Officer or other police personnel shall not be liable for punishment or compensation for any action with bonafide intentions while performing his duty pursuant to this Act or other prevalent laws; or while using the authority or, for execution of any decree, order, or warrant made or issued by Court.</p>	<p>ICCPR 2, 14, 26 Const. 1, 11, 84</p>	<p>Mens rea is taken into consideration by the courts and actus reus should also be taken into account in distinguishing the committal is act, omission or status affairs by the court while hearing the case considering the merit of the case. It is general principle of criminal justice, which is impliedly recognized by the stated instruments. This provision exempts the person to be accused and prosecuted in the name of good faith without examining the faith was either good or bad.</p>
<p>Limitations: No suit shall be initiated against Chief District Officer or other police personnel for any act according to this Act or Rules and Regulations under this Act; or in the persuasion of the authority; or the intention thereof, except as following: 1. Within one month of submission or mail through registered post, of written notice to the Chief District Officer or police personnel disclosing the reasons of initiation suit; and name and address of would-be plaintiff or his representative; and submission of one duplicate copy to His Majesty's Government, A. If no suit is initiated within Eight months of the establishment of reasons for the suit.</p>		<p>In criminal matters whether the person is government employee that should not affect the procedure and legal process, however, the provisions here offers special privileges for government employee than ordinary ones. These provisions grant unnecessary protection to Chief District Officer and Police Officer from any complain against them. In allegations or complaints against person working as public official should be accountable personally for his/her allegedly illegal conduct. However, these provisions are against these norms.</p>

Courtesy: Analysis by CeLRRd

No legislation, except some of the provisions in TCA, was attentively promulgated to prevention or prohibition of torture. Though there are several provisions that are against the letters and spirit of the conventions in the enlisted Acts, however, the governments were fully reluctant to amend them and no proposals were presented to the legislature to consider.

For example, one of the chapters in National Code which is directly related to torture and illegal detention and subject to amend after accession of the Convention kept unchanged. Clause 3 of Chapter False Imprisonment in National Code 1963 is directly related to the implementation of the Convention with necessary update, which reads as:

Who detains person-depriving food and water for following period and if s/he sustained life shall be fined in following rates and imprisoned for the same period.

For one day and night five rupees, for two days 15 rupees, for three days 30 rupees, for four days 60 rupees, for five days one hundred and 20 rupees, for six days two

hundred and 40 rupees, for seven days four hundred and 80 rupees, for eight days nine hundred and 60, for nine days one thousand nine hundred and 20 rupees, for 11 to 21 day adding three hundred rupees for each day six thousand three hundred rupees for 21 days. In such detention if shackled with wooden or lather bind shall be additionally sentenced with one fourth of said punishment and if handcuffed or chained with iron chain over the body shall be additionally sentenced with half of the said punishment. If a minor by anyone and female by male is detained as mentioned above person detaining should be sentenced with doubling the said fine.²⁰

No case was initiated under this chapter in the periods of this report shows that the legislative measures available were ineffective and not trusted by the people for justice and required amendment to address the need of time and norms of justice. One of the reasons of the avoidance of invoking this provision by the victims would be the very low amount of compensation and punishment to perpetrator. For example, if one is detained illegally for one day the perpetrator may be fined for US\$ 0. 06 and imprisoned for a day maximum. There is absence of encouragement from any quarter of society and the State remained totally insensitive to empower victims of torture to exercise this provision by making unclear definition of torture under regime of legal jargons.

Torture Compensation Act (TCA) 1996

Torture Compensation Act was the first legislative measure to render justice to the victims of torture. Though, it offers a great credit to the government as it was first affirmative step in favour of victimized ones, it is not able enough to address the compensation problems and prevent citizens from a routine vicious circle of occurrence of torture.

According to Section 6(1) of TCA District Court can order HMG to pay compensation of maximum of one hundred thousand Nepali rupees²¹ Under Article 14 of the Convention state party is obliged to ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate including the means for as full rehabilitation as possible. But state has no policy to provide compensation to the torture victim as per the word and spirit of the Convention.

Following table demonstrates a contradiction between the international norms and contraventions of the provisions of TCA though it was enacted in the name of implementation of the Convention.

Section of TCA	Inconsistent with	Explanations
<p>2: The term "torture" shall be understood as physical or mental torture inflicted on a person who is in detention for investigation or awaiting trial or for any other reason, and this term includes cruel, inhuman or degrading treatment that person is subjected to.</p>	<p>CAT1, 2, 4, 14</p>	<p>The definition is insufficient to translate the convention's spirits and it neglects the concluding recommendations made by Committee in consideration of initial report of Nepal. (CAT A/49/44)</p>

²⁰ HMGN (2002a). *Muluki Ain (National Code, nepali edition)*, Kathmandu: His Majesty's Government of Nepal, Ministry of Law and Justice, Law Books Management Board.

²¹ 1 US\$ is equivalent to Nepali Rupees 75.

<p>3.1: 'torture shall not be inflicted on any person who is in detention for investigation or awaiting trial or for any other reason.'</p>	<p>CAT 4</p>	<p>State Party of CAT is bound to define torture as a crime of grievous nature; this provision prescribes torture not to be inflicted as moral obligation only. According to a principle of criminal law and criminology, to constitute an act as crime there must be sanctions; present law is outlawing torture without sanction. This also requires to be provided in law related to serious crimes and in Government Cases Act with prescribe penal sanctions.</p>
<p>3.2: 'The concerned officer, at the time of detention and release of any person shall have that person's physical condition examined, as far as possible by a doctor in government service, and , when the doctor is not available, by himself, and shall keep and maintain records thereof.'</p>	<p>CAT 1 BPPAPAFDI 24, 25</p>	<p>The provision has ignored mental torture. Victim's mental examination has not been given importance; where as the definition of torture explicitly includes mental torture. This provision also authorises the police in charge to examine physical condition and documentation thereof. Principles require medical examination by medical professionals only.</p>
<p>3.3: One copy o f the report concerning the examination of the physical or mental condition referred to in sub section (2) shall be submitted to the concerned District Court.</p>		<p>The provisions of the Act contradict in itself. Article 3.2 provides only about examination of physical conditions whereas 3.3 mentions about both physical and mental torture.</p>
<p>4: If it is held that any employee of His Majesty's Government has inflicted torture on any person, the victim shall be provided compensation in accordance with this Act</p>	<p>CAT 1, 2</p>	<p>This provision lacks to give coverage in awarding compensation in case of torture inflicted "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". So, it should be clarified so as to make clear that the government not only bears liability under the TCA where torture has been inflicted by an official himself but also inflicted "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"</p>
<p>5.1: The victim may file a complaint claiming compensation in the District Court of the District in which he was detained within 35 days of having been subjected to torture or of release from detention.</p>	<p>CAT 12, 13, 14</p>	<p>The symptoms and consequences of torture may appear with a longer time span after its infliction. Medical science has proved that symptoms of psychosocial problem of torture in a form of Post Traumatic Syndrome Disorder (PTSD) would begin to appear only after 6 weeks of the occurrence of the event. As physical and mental, both forms of torture are claimable the existing provision exclude the potential claim of psychosocial aspect of said nature. However, this provision requires torture needs to be complained within 35 five days. This extremely short time limit runs counter to emerging international standards according to which statute of limitations shall not apply to violations of human rights or humanitarian law that constitute crimes under international law.</p>
<p>6,6.1: Concerning the complaint filed pursuant to section 5, the District Court shall proceed the complaint in</p>	<p>CAT 14</p>	<p>The provision has determined the compensation maximum up to one hundred thousand which does not meet the spirit of CAT which provides right to fair and adequate</p>

accordance with the procedures set forth in the Summary Procedure Act, 2028 (1972), and, if the matter of the complaint is found to be true, may make adjudication to have compensation in maximum of one hundred thousand rupees paid by His Majesty's Government to the victim.		compensation, including the means for the full rehabilitation as possible.
6.2: While trying a complaint pursuant to sub-section (1), if it is found that the complaint was filed with mollified intention, the District Court may impose a fine up to five thousand rupees on such complainant.	Principles of Criminal Law	Torture is crime, and merely reporting a crime should not be punishable act as recognised by principle of criminal law. This may create threat to victims in complaining.
7: If it is held that torture has been committed in accordance with this Act, the District Court shall order the concerned authority to take a departmental action according to existing law against the government employee who committed the act of torture	CAT 4, 12,13,14	As torture is a crime of grievous nature and criminal sanctions are required, recommendation for departmental action, while important, would not be sufficient in light of the obligation to investigate acts of torture and to punish the perpetrators where found guilty.
10: Concerning the complaint in accordance with Section 5, if the chief of the concerned office requests, the Government Attorney shall appear in the court on behalf of the employee and defend him	CAT 6,12,13	Grievous criminal offence should be prosecuted instead of being defended. It requires taking into the custody allegedly committing an offence. This defending provision was challenged to the Supreme Court asking its annulment, as it was incompatible with the spirit and provisions of the Constitution and the Convention. However, the Court concluded that it was not inconsistent with them, as the accused perpetrator would be presumed innocent. Though the Court concluded so, the prosecutor's role is jeopardised. For example, if a victim dies or mutilated by torture, the prosecutor should defend torture compensation case and prosecute homicide or mutilation case against the same perpetrator in accordance with criminal proceeding by virtue of Section 12 of TCA.

In reality, Torture Compensation Act 1996 was a result of a face-saving attempt of the State to pacify the cry of human rights defenders. The government initiated the law only after intensive pressure from civil groups and defenders. The government was varying cautious from the very beginning to protect its employee against actions rather than to render justice to the victims. Provisions of Sections 3.2, 5.1, 6.2, and 10 are explicit enough to justify the said intention of the government.

Institutional Measures:

Formation of Human Rights Promotion Centre, Human Right (HR) Cell in the Home Ministry, Human Right Cell in Police Headquarters, Human Right Cell in Royal Nepalese Army (RNA) and Human Right Cell of Armed Police Force (APF) has derailed the spirits of monitoring and strengthening of human rights. These institutions are not transparent. People do not know what they are doing. For what purpose are they working? And, for whom they are working and what the out put of these institutions. State report has also failed to provide detailed information regarding these institutions. From the part of civil society it can be stated that by the establishment of these institutions we have not felt, seen, heard any positive steps to minimize or eradicate torture in the country.

The weakest aspect of the administration of criminal justice that leads to systematic injustice to women including torture and other forms of cruel, inhuman and degrading treatment. There is no consideration to the special needs of women those face the process of criminal justice proceedings. There is a women cell in Nepal Police; however, it is just a showcase, as it has not been organized under regular organogram of the police organisation. All incarceration institutions are governed by male staffs, No arrangement has been made by the government to address the management of women prisoners by women warden.

Judicial Measures:

Within reported period, state report has failed mention about judicial initiation. This is because there is no initiation taken by the judicial organs to address the problem of torture proactively. Neither a discussion was held on the implementation of the Convention nor any of the judges or court staff was sensitised with a view to appropriately implement the Convention or the relevant law.

Supreme Court, which is empowered constitutionally to interpret international treaty to render justice to the victims, failed to follow the spirit of the Convention appropriately.

In *Prabhujee Pant (on behalf of Purna Bahadur Chhantyal) v. Chief District Officer of Dang* the detained had asked compensation against preventive detention in accordance with the provision of Article 15 of the Constitution as well as raised the question of legitimacy of the detention. The court held that the Constitution holds that compensation would be as specified by law and no law had been found to award compensation (NeKaPa, 1992 BS: 298). This precedent blocked the torture victims to seek justice with compensation through exercising extraordinary jurisdiction of the court prior to the promulgation of TCA.

After promulgation of TCA, three prominent legal policy issues (as summarized in successive paragraphs) regarding proper implementation of the Convention were brought by lawyers through public interest case to the Supreme Court. However, in all three cases the Court favoured the government's stances. The judicial vision of the Apex Court expressed in three cases clearly demonstrates that there is absence of thinking at the court to take the convention positively. More oppositely, the Court deemed to be allowing the investigators to take help of torture for investigation and to maintain chain of command in the police force through an application of torturous means of disciplinary punishment.

A writ petition was filed before Supreme Court to declare Section 10 of TCA *ultra vires* which states Government Attorney shall appear in the court on behalf of the alleged perpetrator. Writ petitioner's plea was that Government Attorney should defend torture victim not the alleged perpetrator. Section 10 of TCA is against the spirit and letter of the Convention, Article 14, 110 and 116(1) of the Constitution of the Kingdom of Nepal, and other accepted principles and values of human rights. Writ petitioner asked the court to declare Section 10 of TCA *ultra vires*. The court rejected the plea and held that a man is presumed to be innocent until proved guilty and there is no any provision in CAT, which prohibits defending alleged perpetrator by Government Attorney. Therefore, the writ petition was quashed.²²

²² Rabindra Bhattarai v. HMG/N Secretariat of Council of Ministers and others, Decided by Supreme Court on 19 March 1998

In another petition filed by a lawyer asking nullification of a particular provision of Police Act 1955 which provides physical punishment of fatigue or detention up to 15 days to the junior police personnel without maintaining due records. This corporal punishment, which constitutes torture, was considered by the court a perfect provision to keep junior police personnel under discipline.²³

Similarly, another writ petition was filed before Supreme Court to declare Section 6(1) of TCA *ultra vires* which states that torture victim may get up to one hundred thousand rupees compensation as per the decision of court. Writ petitioner challenged the provision on the basis that the amount is not enough for full rehabilitation of torture victim and the provision is against the Article 14(1) of CAT and Articles 1,126 of the Constitution of the Kingdom of Nepal 1990. Writ petitioner asked the court to declare Section 6(1) of TCA *ultra vires*. The Court rejected the plea and held that it is the subject matter of exclusive competency of Parliament to make law and it has power to make law what it considers fit, the issue raised in this case is not a concrete case but a hypothetical one therefore it is not a duty of court to decide the case and as per Article 14(2) of CAT also prevailing domestic legislation prevails therefore the petition dismissed.²⁴

In some torture compensation cases the courts of initial jurisdiction have decided the cases concluding that compensation to be awarded to the torture victims²⁵. But due to the lengthy court process, formalities in courts, costs incurred on lengthy legal process and the compensation amount which court generally decided as to be awarded always discouraged victims to file torture compensation case.

As per Section 6(1) of TCA torture compensation cases shall be handled under Summary Proceeding Act (SPA), 1972. According to Section 10 of SPA, the cases under this Act shall be decided within ninety days of submission of defendants' statement or submission of rejoinder by defendant. However, the provision is repeatedly being violated in torture compensation cases. Other cases like murder, theft, arms and ammunition do maintain necessary connection with torture compensation cases causing torture compensation cases prolonged.²⁶ The district courts generally consume 2 to 5 years to decide torture compensation cases. If appeal filed, then it needs further time to finalize the cases. The box shows the general scenario in this regard.

S. N	Name of Case	Case filing date	Decision date	Remarks
1.	Thamser Rai on behalf of Ganesh Rai Vs. Police Inspector Deebesh Lohani and others	11 November 1998	11 September 2003	Yet to get compensation
2.	Aswin Kumar Dahal Vs. Superintendent of Police Ram Chandra Khanal and others	9 March 1999	9 June 2003	Now the case is in Appellate Court
3.	Netra Kumar Rai V. Ward Police Office Durbar marg	12 April 1999		Yet to be decided
4.	Netra Bahadur shah Vs. Ward Police Office, Singhdurbar	2 April 1999		Yet to be decided
5.	Parwati Rai Vs. Dharma Raj Bhusal	1 October 1999		Yet to be decided

²³ Rabindra Bhattarai v. HMG/N Secretariat of Council of Ministers and others, Decided by Supreme Court on 30 Aug 2001.

²⁴ Madhav Kumar Basnet and other v. HMG/ N, Secretariat of Council of Ministers and others, Decided by Supreme Court on 10 Sept 2003.

²⁵ See discussion on Article 14 in this report.

²⁶ Thamser Rai on behalf of Ganesh Rai Vs. Police Inspector Deebesh Lohani and others, Kathmandu District Court (Case filing date 11 Nov 1998), Madan Narayan Shrestha Vs. Superintendent of Police Deepak Ranjit and others, Kathmandu District Court (Case filing date 8 December 2003), Jaya Kumar Shrestha Vs. District Police Office Nawalparasi and others, Nawalparasi District Court (Case filing date 1 May 2003), Manoj Kumar Shrestha Vs. District Police office Nawalparasi and others, Nawalparasi District Court (Case filing date 1 May 2003), Aswin kumar Dahal Vs. Superintendent of Police Ram Chandra Khanal, Appeal Court Patan (Appeal filing date 21 October 2003).

Recommendations

Legislative

- TCA should be amended in order to extend the limitation of filing complaint for compensation
- TADO should be amended as per the principles of rule of law and human rights or should be withdrawn as soon as possible.

Institutional

- Activities of Human Rights Cell in RNA, APF, Nepal Police and Human Rights Promotion Centre should be made transparent and accountable to the elected bodies.
- A separate, independent institution for the investigation of alleged torture incidents should be established

Judiciary

- Sensitisation programme for judges and judicial officers is necessary to make effective adjudication of torture compensation cases.
- Role of the judiciary in implementation of the Convention shall be extensively made clear and necessary step of implementation should be taken sincerely.

Article 3

Non-Refoulment

Article 3 prohibits the expulsion, refoulment or extradition of a person to a state where he/she risks torture, and contains the standards for assessing the risk. A person having well founded fear of persecution must not be expelled or extradited to another state if there is risk of torture – this applies in even where the person is a alleged terrorist. Human rights including freedom from torture have universally accepted, respected and recognized, which makes it a person a matter of international interest. Article 9 of Universal Declaration of Human Rights affirms that: No one shall be subjected to arbitrary arrest, detention or exile. This is regarded by human rights and torture rehabilitation centers as an absolute and cannot be balanced with such considerations as danger to the security of the public or risks to national security.

Legislative Measure

As per Article 21 of the Constitution, no citizen shall be exiled. Similarly, according to the Extradition Act 1988 no person shall be extradited on political grounds. These considerations would apply even in cases of non-nationals. Non-refoulment of an offender to a State where he/she would be in danger of being subjected to torture would be given effect to by way of administrative or executive action taking into account all relevant factors.

Initiative Taken By State

Nepal is not signatory to the UN Convention on Refugees and its Protocol, but it has been quite flexible and accommodating towards the victims of forced migrations. As compared to many developed countries of the world who have adopted very strict entry procedures, Nepal has adopted rather soft policies on entry of asylum seekers. :

Nepal has given asylum to more than one hundred thousand refugees from Bhutan. These refugees are provided with shelter and their care and maintenance is also being provided with the help of United Nations High Commission for Refugees (UNHCR), World Food Programme (WFP) and other humanitarian relief agencies. Several round of bilateral talks have been held in past for their dignified and voluntary repatriation.

Similarly, about 20 thousand Tibetan refugees have been provided shelter in this state for many years. Although, Nepal is not a party to the International Refugee Convention, and therefore not bound by international obligations as such, it has given shelter to those refugees on humanitarian grounds with a principle of "*saraan ko maaran nagarnu*" (*principle to protect asylum seekers*)

Nepal is also providing safe passage to those who are found asylum seekers. In this process UNHCR/Nepal is allowed to verify and establish the status of people seeking asylum. HMG/N allows the processing of such persons of concern by UNHCR for resettlement to any third country. In this process, since 1990 nearly 29,000 Tibetan asylum seekers were given safe passage to go to a third country, among others.

Gaps and Challenges

Though Nepal is state party to the Convention against Torture, yet it is not working in accordance with the principle of the Convention

Insufficient knowledge regarding the Convention is seen in law enforcement agencies.

Each influx of refugees receives a different package depending on political motivation and ethnic linkages.

In the absence of laws concerning treatment of asylum seekers/refugees, the response to refugee influxes remains ad hoc.

The refugees have no legal protection against summary expulsions as they are treated as illegal immigrants and not as refugees fleeing persecution. As a result, the UNHCR has not been able to provide effective and meaningful protection to most refugees in this region.

So far the Nepal-Bhutan talks have yielded no results. Each talk in past ended with the decision to meet next. The stumbling block has been the categorization of the refugees and the failure of the two governments to harmonize positions on each of the category. The categories include Bhutanese citizens who have been forcibly evicted, Bhutanese who have voluntarily migrated, non-Bhutanese people and the Bhutanese who have committed criminal acts.

The voluntary return of the refugees to their homes also seems deem since the Indian government does not allow its territory to be used against the Bhutan regime. The peace march in past was not allowed by the Indian government and hundreds of refugees were arrested and detained. So much so the Indian government forced the refugees back to Nepal.

Nepal has not been able to put effective pressure on the government of Bhutan. On the international front while Bhutan has been offensive in its propaganda against Nepal on the issue of the Bhutanese refugees, Nepal has made no efforts either to counter this offensive or take up the refugee issue at appropriate UN and international forums. Nepal's diplomatic efforts have yielded no results as a result while the refugee issue is still pending Bhutan has begun resettling people on the lands in southern Bhutan belonging to refugees and resorted to firing of civil servants related to the refugees.

Although HMG/N has pursued the policy that it will not expel, return or extradite any person to other state where there are substantial grounds for believing that he/she would be in danger of being subjected to torture, there are enough evidences of the expulsion documented

Expulsion

The numbers of Tibetan asylum seekers had decreased from approximately 3,621 in 1994 to 2448 in 2002. Tibetan escapees report that deportees are conscripted into hard labor on the Kumbum-Lhasa railway or on road gangs, some are imprisoned, some are forcibly returned to their villages and denied permission to travel outside their districts. Former political prisoners and dissidents evading arrest are in nearly every case imprisoned and subjected to torture and prolonged solitary confinement. It is also dangerous for refugees to return; a Tibetan who has been to Nepal or India risks interrogation, harassment, work and travel restrictions.

The UNHCR mission has assisted securing safe passage of refugees from Nepal to India. However, incidents of repatriation, robbery and sexual assault by Nepali border patrols continue, which furthers the case for assigning a full time UNHCR protection officer to the region. The human rights community believes that given the changing hostile attitude towards Tibetan refugees in the recent days funding for Tibetan refugee assistance be maintained at the original level, as frequent visits to the Tibet-Nepal border by a UNHCR protection officer yield immediate results; refugees are released from police custody and allowed to continue to Kathmandu, where UNHCR operates a medical clinic, identification processing and temporary shelter.

Eighteen Tibetan refugees who were detained after arriving in Nepal from Tibet have been deported in a joint operation by the Chinese and Nepalese authorities, according to eyewitness reports. In the past hour, the Tibetans, eight of them aged between 14 and 18, have been handed over to Chinese border guards at the main checkpoint between Tibet and Nepal at Friendship Bridge. The Tibetans had been forcibly removed from Hanuman Dhoka jail by Nepalese and Chinese police and officials at approximately 7.30 am (1:45 am GMT) this morning. Wangchug Tsering, representative of the Dalai Lama in Kathmandu, said: "The way the Chinese and Nepalese authorities have been working on this case together is unprecedented, and makes us fear for the future of Tibetans in Nepal. It indicates the level of Chinese influence in Nepal." The deportations were implemented despite strong international lobbying in support of the Tibetans behalf over the past few days and high-level interest in the case; the US State Department convened a meeting yesterday to express its concern direct to the Chinese ambassador in Washington.

More than 60 Tibetans gathered outside the Hanuman Dhoka main police headquarters and prison yesterday in an attempt to prevent the deportation of the Tibetan prisoners, but this morning Tibetans who arrived at the jail to continue the vigil for the refugees were cleared from the immediate area by police. The 18 Tibetans (14 males and four females) were loaded into a bus with a covered number-plate and driven away in the direction of the border with a Nepalese police escort. Wangchug Tsering said: "They were carried bodily out to the vehicles. My staff heard them crying and screaming, and appealing for the help of the Tibetan refugee centre and the United Nations High Commission for Human Rights."

The Tibetan deportees, who are from various areas of Tibet, were among a group of 21 who were detained

by Nepalese police on 15 April after they had crossed the Nangpa la mountain pass in Solo Khumbu, a common escape route from Tibet. They had been on their way to the Tibetan Refugee Reception Centre in Kathmandu, but instead were taken to the Dilli Bazaar jail in the centre of the city and charged with "illegal entry in the Kingdom of Nepal". Because they did not have the money to pay the fines imposed by the Department of Immigration, the Tibetans were given prison sentences ranging from seven to ten months. Three members of the group, a nine-year old girl and two six-year olds, a boy and a girl, were later released into the custody of the United Nations High Commission for Human Rights (UNHCR). The father of the six-year old boy is among the deportees.

The usual procedure for Tibetans arriving from Tibet into Nepal is for the refugees to be taken by police to the Immigration Department in Kathmandu and handed over to the United Nations High Commission for Refugees (UNHCR). Since 1989 there has been an informal arrangement with the Nepalese government and the UNHCR that Nepal would allow the UNHCR to facilitate transit of new arrivals through Nepal to Tibetan exile communities in India.

Last year, a number of Tibetans who were arrested for similar reasons to the group of 18 – lacking valid residence or travel papers - had their fines paid by non-governmental organisations and private individuals in order to secure their release. But the deportations today set a new precedent, and indicate the harder line being taken towards Tibetan refugees by the Nepalese government.

Chinese Embassy officials in Kathmandu appear to have either paid the fines of the Tibetans or had them waived by the Nepalese Home Ministry in order to secure their release into Chinese custody. On Thursday (29 May), Tibetan staff from the government in exile went to Dilli Bazaar jail with the specific purpose of paying the fine for the Tibetan detainees and securing their release. According to the Office of Tibet in Nepal, an official from the Chinese Embassy arrived at the prison the same day, apparently with a release order from the Department of Immigration. The detainees were transferred to the main police headquarters, Hanuman Dhoka, that night, and UNHCR representatives and others were refused access. Prison transfers or similar police operations would not normally be carried out on a Saturday, which is a holiday in Nepal.

At least eight of the prisoners were ill, with three being described by visitors to the prison who attempted to gain access as being "in a serious condition", suffering probably from gastro-intestinal problems. One of the Tibetans was so debilitated that he could not even walk properly, according to the Tibetan Centre for Human Rights and Democracy in Dharamsala, India. A doctor sent by the UNHCR was denied access to the Tibetans yesterday.

Source: *Kate Saunders, World Tibet Network News, 31 May 2003*

Recommendations :

- The UN Convention Relating to the Status of Refugees 1951 and the Additional Protocol (1967) should be ratified and incorporated into domestic law, in order to safeguard the principle of non- refoulment and the right and dignity of refugees and asylum seeker.
- There should be adequate training to the boarder security personnel and law enforcement agency.
- Appropriate domestic law should be formulated in compliance with the treaty.
- The verification process is another issue that needs to be dealt with in a manner to ensure every Bhutanese refugee has the opportunity to return home. If verification is subjected to Bhutan's citizenship laws, then, it would very be difficult for many of the Bhutanese refugees to return home. The verification must be done in accordance with the international human rights norms, principles and standards as suggested by the UN Sub-Commission on Human Rights in August last year as well as the resolutions of the European Parliament adopted in 1995.
- The classification of the Bhutanese refugees into four categories is not acceptable as it seriously undermines the gross human rights abuses committed by the Bhutan regime. There could be only two categories of the refugees, Bhutanese and non-Bhutanese during the verification and the government of Bhutan must accept every Bhutanese verified as its citizen.
- In view of the slow pace of Nepal-Bhutan talks and lack of a proper government body to look after the refugee issue, it is suggested to form a Task Force comprising of four to five members to regularly deal with the refugee problem. Such a Task Force can be formed within a Ministry for example, the Home Ministry.
- The failure of the Nepal-Bhutan talks on refugee repatriation needs serious evaluation to ascertain whether it should be continued any longer. The government of Nepal should clearly communicate to the Bhutan regime that it will no longer pursue the

bilateral talks should the eighth round fail to yield any result. The option then would be to take up the case formally to the United Nations and other international forums. The next appropriate forum would be the UN Human Rights Commission session taking place in Geneva

- The continued delaying tactics to resolve the problem by the government of Bhutan must now end and the government of Nepal has to take strong initiative in this regard to ensure that Bhutan is not allowed to repeat its tactics.
- The faulty categorization, as mentioned earlier, is another major set back for early resolution of the problem since it simply worsens the situation by 'defusing' hot anger and grievances of the refugee community as well as of the international community. Besides, the categorization is no way in compliance with any available international human rights and humanitarian laws, standards, norms, practices and principles.
- Many of these problems can be avoided both through the enactment of legal norms on entry procedure status and the creation of rights for asylum seekers and refugees. A legal framework for the protection of refugees requires the following:
 - provision to be made for their protection during their refugee status;
 - finding solutions for their problems;
 - enabling them to return to their home country and
 - inter-governmental mechanism at the regional level for protecting the returnees in their home countries.

Article – 4

Torture as Criminal Offence and Punishment

All the state parties are obliged to define torture as criminal offence and it should be made punishable by appropriate penalties in their countries. State report (Para 57) also accepts this fact that Nepal has not defined torture as criminal offence.

Torture has been recognized around the world as one of the most serious crimes, and its prohibition as a fundamental standard of the international community. Conventions and treaty texts setting out the prohibition of torture have stipulated that torture must be characterized as crime in domestic law.²⁷ The essence of Convention rests on criminality of torture. More than 13 years has been lapsed after accession to the Convention but the government has shown indifference to declare torture as criminal offence.

State report (Para 61) reads “the perpetrator shall be punished with the imprisonment up to three years or with the fine or both”. It also states the draft is waiting parliament.

However, this definition is not consistent with the spirits of Article 4 of the Convention, as it does not cover the acts of *attempts*, *complicity* and *participation*. As there is no clear definition of torture reflecting the words and spirit of the definition of torture in Article 1 of the Convention, the implementation of this draft, if promulgated, would have the same fate of TCA. Similarly, it is said only fine and there is no prescription of upper and lower limits of the fine that can be imposed to the torturer.

Waiting parliament is not a justification for promulgation of this act as there have been several changes in other laws through issuance of ordinance by the King in the absence of Parliament. Torture as crime against humanity, is insufficiently defined with light penalties compared to its criminal gravity under draft Criminal Code which is inadequate to combat ever-growing practice of torture and flourished impunity.

The time limit for lodging complaint against the committal of torture as proposed in the draft code is limited to three months. Considering the nature and seriousness of crime of torture time limit should not be narrowed but open for longer period as far as possible.

Nepalese legal regime against torture is heavily criticized for failing to incorporate all the basic elements of the Convention, like recognizing torture as a criminal offence, the law, nevertheless, provides a framework from which an anti-torture jurisprudence could develop. The burden of proof required for receiving compensation is impractical as a result of which victims have not been duly compensated.²⁸

Recommendations:

- The acts of torture should be defined as serious criminal offence explicitly the act of torture, attempts to torture and complicity and participation thereon.
- Adequate penalty for the perpetrator should be laid down and the minimum and maximum limitation (at least five to 10 years) of imprisonment and penalty should be fixed so that discretionary power of the judges would be reduced.
- There should be open clause on time limit for lodging complaint or reporting the case of torture.

²⁷ The Redress Trust, *Reparation for Torture; A Survey of Law and Practice in Thirty Selected Countries*, 2003, p.30

²⁸ Binod Bhattarai et al, *Impunity in Nepal; An exploratory Study*, 1999, p.29

Article – 5

Jurisdiction of the Court

Though State report interprets the jurisdiction of District Court and NHRC over the cases, there is no question of rendering jurisdiction to any authority when torture is not defined as criminal act punishable under criminal law of the country. Section 5 of the TCA provides jurisdiction to consider the complaint made for seeking compensation.

On the basis of the power vested under Section 23 of HRC Act 1997, the NHRC has formulated a Complaints, Actions and Determination of Compensation Rules, 2001 to effectively execute the Act. Among others, the rules fix the amount of compensation for various kinds of human rights violations, including torture. In the case of torture, the Commission can impose compensation up to NRs. 100,000.00 on the perpetrators depending upon the nature of torture.²⁹

Torture compensation cases in NHRC

Under Human Rights Commission (Complaints, Action and Determination of Compensation) Rules 1997, 151 cases have been filed in the Nepal Human Rights Commission. Among these cases NHRC has given its decision in Rabindra Silwal's case and recommended government to provide compensation amount of Rs. 50000.00 (fifty thousand) to victim. Government has already provided the said amount to the victim. This is the first case in Nepal on which torture victim received the compensation amount.

Source: NHRC, Annual Report 2004.

Proposed Criminal Code also does not fully recognizes the intent of this article. State report claims the Code has extraterritorial jurisdiction, however, the jurisdiction may be applicable when perpetrator is subject to the jurisdiction of Nepal. It does not include from the victims perspective and the code may not be extended if the victim is Nepali and perpetrator is else one, in particular, there is absence of clarity on the explanation of jurisdiction as specified by paragraph 2 and 3 of the Article 5 of the Convention.

Recommendations :

- The law and practice shall ensure that seeking compensation through court or NHRC are guaranteed as separate remedies and shall not be taken as overlapping of jurisdiction.
- The government should take necessary measures to define torture as crime and establish jurisdictions:
 1. Territorial
 2. Extraterritorial
 3. When the alleged offender is a national of that State;
 4. When the victim is a national of that state if that state considers it appropriate.

²⁹ NHRC, Human Rights in Nepal: A Status Report 2003, p.37.

Article – 6

Proceedings

As it has been already discussed that torture is not defined as criminal offence under Nepalese law. TCA has given jurisdiction to district court but the courts are not clear about the nature of torture compensation cases. Some district courts have registered torture compensation cases as civil cases and other district courts have registered these cases as criminal cases with civil plaintiff. In this way, same case under same section of TCA is being treated as different way. Therefore, it is necessary to define torture as criminal offence so that court will treat these cases as criminal cases with no confusion.

Courts in dilemma

Parbat District Court has registered a torture compensation case of Meghnath Sharma as civil case and ordered plaintiff to submit court fee to the court in order to register the case. Now the case is in *Sub Judice* in the same court.

Kathmandu district court officer ordered to submit court fee to register torture compensation case On 25 March 2002 of torture victim Sanjeet Danel. Then plaintiff filed petition against the order of officer claiming that there is no need of paying court fee on torture compensation case. Hearing the petition the District Judge ordered to register the case without paying court fee. Out of 151 Torture compensation cases most of the cases were registered without paying court fee.

Source: CVICT Record

In paragraph 64 of state report Article 14(6) of the Constitution has been quoted: every person arrested and detained in the custody shall be produced before a judicial authority within a period of 24 hours, excluding the time of journey from the place of arrest to such authority. But it is found that security agencies have not followed this constitutional provision. One of the studies has shown that 37 percent of the 222 cases examined were detained more than 24 hours despite specific legal safeguards against such detention.³⁰

As Section 3(2) of the TCA stated that the concerned officer, at the time of detention and release of any person shall have that person's physical condition examined, as far as possible by a doctor in government service, and, when the doctor is not available, by himself, and shall keep and maintain records thereof. Generally the provision is progressive and intending towards protecting the right of detainees. However the provision of making health examination by police personnel himself is not appropriate. General police do not have knowledge of health examination therefore amendment is required in this provision.

³⁰ ILRR,, *Analysis and Reform of the Criminal Justice System in Nepal*; Kathmandu: Centre for Legal Research and Resource Development {a report of study conducted by Institute for Legal Research and Resources (ILRR)} 1999).

Article – 7

Prosecution and Fair Trial

Article 14 of the Constitution of the Kingdom of Nepal 1990 has guaranteed right regarding criminal justice. A study of Nepalese criminal justice system conducted by CeLRRd has explored some facts and figures on the shortcomings of Nepal's criminal justice system. The study has identified following three major areas of concern in the criminal justice system of Nepal:³¹

- A majority of accused were arrested and detained without issuing warrant notice
- Torture and other forms of ill treatment were widespread method of obtaining confession, and
- Only a small number of arrested and detained received legal assistance from legal professional. In practice, arrested are given access to their legal counsel only after deposition of suspect with police.

The consistent delay in procedures due to the formalities criminal justice system is largely responsible for frustrating the achievement of procedural fairness. The trial of criminal offences by quasi-judicial tribunals still phenomenal, leading to departmentalisation of the criminal justice system. The same institution is involved in the investigation, prosecution and adjudication of offences, and thus potential for bias is always great.³²

International principles and treaty texts have, to a certain degree, reflected the difficulties in substantiating allegation of torture and ill treatment in custody. Evidence of torture is often difficult to locate, given that torture is often perpetrated without witnesses, and torture methods are designed to avoid visible scars. Special Rapporteur on Torture has recommended that when allegation of torture and ill treatment are raised by a defendant during trial, "the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill treatment."³³

Recommendation

- The government should make necessary arrangements to define torture as crime with appropriate punishment, to conduct preliminary inquiry to the facts and ensure taking alleged torturer into custody or take other legal measures to ensure his presence. Further, it should ensure that lawful proceeding for trial or extradition of the accused.

³¹ Stephen J Keeling & Rabindra Bhattarai (ed), **Nepal's Penal System; An Agenda For Change**, Kathmandu: CVICT, 2001, pp. 46,47.

³² CeLRRd 2002, p. 5.

³³ The Redress Trust, **Reparation for Torture; A Survey of Law and Practice in Thirty Selected Countries**, 2003, p.33.

Articles – 8 and 9

Extradition and Mutual Legal Assistance

The Extradition Act 1988 allows the government to extradite a person who has committed an offence as stipulated in the Extradition Treaty 1953 with any foreign country, with the exception of political offence. Nepal has such a treaty only with India. In the treaty of 1953, 17 offences are listed as offences for which extradition is to be granted. Although torture is not included in the list, the following offences have been incorporated:

- (1) Murder or attempt or conspiracy to murder,
- (2) Grievous hurt.

Gaps and Challenges

Nepal has no mutual judicial or legal assistance treaty with another country except with India. However, as a member of international community, HMG Nepal extends its cooperation to other states in connection with criminal proceedings on a case-by-case basis and on assurance of reciprocity

There is a need to conclude extradition treaty with other nations without jeopardizing the fundamental non-derogable rights of the suspects and internationally accepted legal norms and standards

Initiatives Taken by State

A bilateral discussion is in progress with India to replace the Extradition Treaty 1953 with a new one.

Both countries want to update the extradition treaty to combat terrorism and cross-border crime more effectively. They also want to include provisions to address activities like cyber crime

Recommendations

- Government should follow and comply with the recommendations sent by the UN CAT committee.

Article – 10

Education on Prohibition of Torture

Following change in political system, a new constitution was formulated in 1990. The Constitution outlaws torture and guaranteed right regarding criminal justice as a fundamental right. However, torture continues to be reported almost daily in the country. This is due to a number of factors, including the lack of effective investigative mechanisms and a general climate of impunity in relation to human rights violations. Nepal has a tradition of torture and humiliation of criminal suspects by police and local authorities, and torture as a punishment is still widely perceived as acceptable.

During the last 14 years, reports of torture by police have increased in the context of police actions against alleged members and sympathizers of the Communist Party of Nepal (Maoist) which in February 1996 declared a “people’s war” and started an armed struggle.

In April 1998, AI Nepal launched a human rights training program for the police under the auspices of Teaching For Freedom. Since then the program has been expanded and has been conducted in four phases. To the date the AI Section has provided human rights training for 2,218 police personnel from general officers to the Chief of Police.

There are some legal provisions to educate law enforcement officials including prison officers and medical professionals regarding human rights. Different Acts and Regulations such as; Nepal Police Regulation 1992 and HRCA 1997, deal with human rights education to security personnel. Nepal government is yet to provide educational training to law enforcement authorities including security personnel focusing on torture.

On 10 March 2004, NHRC recommended minimum immediate steps for the human rights protection to HMG/N emphasizing the work of state officials, including security personnel, is of great importance and there is a need to maintain, to improve the working conditions and status of these officials.³⁴ Even with this recommendation the government failed to implement it.

British and US military assistance to Nepal is reported to have human rights contents included in training. Human Rights Cell of the RNA is also conducting training, interactions and seminars on the issues of human rights as a bid to educate its employees on the subject.³⁵

Non-governmental organisations working in the field of human rights have also been providing training to security personnel, law enforcement officials on human rights education with focus on torture.

Gaps and Weaknesses:

Due to the lack of knowledge in the field of human rights, security personnel misuse their authority by settling confrontation through torture. Arrogance, repulsive behaviour and dogmatism amongst the authorities and their total disregard for other’s right to life and right against torture contributes to the continued misuse of authority. It has been found that in spite of having knowledge, they defend their ignorance to continue misusing their authority.

- The Constitution prohibits torture, and the Civil Code prohibits acts such as beating and mutilation; however, security forces at times used torture and beatings to punish suspects or to extract confessions.
- Beneficiaries of training are only high-level officers in state agencies.
- Lack of public awareness in realizing torture as a crime.

³⁴ Press Release, Minimum immediate steps for the Government to protect human rights, National Human Rights Commission, 12 March 2004

³⁵ Human rights and Humanitarian law 22-26 July 2002 and 5-9 august 2002; Interaction programme on Human rights on 21 August 2002, Interaction programme by British army human rights team in kathmandu, Nepaljunj and Pokhara 7-26 November 2002, Human Rights and Humanitarian law seminar jointly conducted by the Judge Advocate Branches of the RNA and the US army 13-14 May 2003.

- The government has no concrete plans and policies for awareness raising programme for security and medical personnel to reduce torture during investigation.
- Members of the security forces have often been found unwilling to investigate and to discipline fellow officers, and persons were afraid of bringing cases against the police or army for fear of reprisals.

Recommendations:

The prime responsibility and duty of promotion and protection human rights lies with the state of Nepal. For the protection and promotion of human rights and to eradicate torture government should take following steps.

- Police should broaden the definition of torture to include psychological torture and ill, inhuman or cruel treatment.
- Rules of engagement for armed forces and law enforcement officials, as well as their operations, training, equipment, stress counselling must be reviewed for the protection of human rights.
- Providing training and education on human rights to judges, lawyers, security personnel and court officials. As well as including human rights education in the curriculum of school and university level education following prohibition of torture.
- The government should realise the importance of the supervision mechanism on the issues of human rights if it's commitments on human rights and good governance are realized. It should provide resources to the supervising and monitoring institutions and encourage them in their functions by providing information as demanded.
- Public awareness is vital for prevention, disclosure and remedies for incidence of torture. To develop confidence among public that torture is illegal act and it can be appealed against public
- An awareness activity needs to be launched. Media can play very important role to this area.
- Training courses and training manuals should be provided for police and security personnel with contents against torture
- Health-sector personnel should be instructed on relevant international principles; governments and professional medical associations should take strict measures against medical personnel who play a role, direct or indirect, in torture, such prohibition should extend to such practices as examining detainees to determine their "fitness for interrogation" and procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse; the withholding of appropriate medical treatment by medical personnel should be subject to sanction.

Article – 11

Review of Interrogation Rules and Prisons

State report claims that there have been systematic reviews of interrogation rules and prisons. The stated rules are formulated under statutory laws, which are with defective properties to hinder the implementation of the Convention. There are several provisions, which are inconsistent with international instruments of human rights in administration of justice. The major may be observed as:

Government Cases Act 1992 is defective in terms of effective implementation as its definition of the court is as "Court" denotes the bench of the judge and this term shall also denote the officer with authority delegated to undertake judicial works relating to any case as per the prevailing laws.³⁶ Article 14 of ICCPR and Article 5 of Basic Principles on Independence of Judiciary require courts to be independent, competent and established by law. Officers with delegated power cannot be considered as court. The competence inclusive of qualification, security of the service tenure, bond of professional secrecy and functional independence with fairness and impartiality ensured by statutory provisions are required for a court with secular morality.

Section 14 (1) and (2) of the Government Cases Act empowers police and individuals to arrest saying that "(1) Any police personnel conducting investigation relating to any crime as per this Act can arrest a person if there is appropriate reason to suspect about that person's involvement in the crime, and the person so arrested shall not be detained without giving the notice, also disclosing the grounds for arrest. (2) Any witness to a crime can arrest the person committing the crime and hand that person over to the nearby police office"³⁷.

There is no security of the person subjected to such arrest to have informed with the family or legal counsel. No specific rules or guidelines are prepared to avoid the potential torture and inhuman treatments during the travel period while taking into custody is available under existing rules and regulations. There are innumerable reports of tortures and misbehaves in the time of arrest.

Similarly, the provisions in Prison Act 1963 are with full of ambiguity and inconsistencies with international instruments of human rights. Section 22 of the Act empowers prison authority to apply restraints even in a condition where a detainee complains sickness with pretence. Rule 5 of Prison Regulations 1964 allows keeping prisoners in incommunicado detention and isolation. There is neither regular mechanism of NHRC to visit prisons nor any guidelines to evaluate the condition of human rights of the prison. There is provision of convict officers in the Name of Naik and Chaukidars in the persons and violation by these convicts officer is not heard by any mechanisms at all.

Article 11 of the Convention obliges state parties to keep systematic review of interrogation rules, instructions, methods and practices, arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in its jurisdiction, with a view to preventing any cases of torture. The state report in paragraph 86 has mentioned that 'HMG/N is systematically reviewing its interrogation rules, instructions, methods and practices' but the question arises has the government taken into consideration prevention of torture while reviewing any Act or Regulations? It is clear that all the amendments of Act and Regulations do not fall under the meaning of Article 11 of the Convention. But the report has not given any instance of revision of interrogation rules; instructions, methods and practices in order to prevent any form of torture although there is acute need of doing so.

Interrogation process starts after arrest of the suspect. In criminal cases under the State Cases Act the suspect need to be made present before Government Attorney for interrogation. In practice, the interrogation takes place in police custody, and the deposition is made in the presence of government Attorney. This clearly shows discrepancies in the process of

³⁶ Government Cases Act 1992, Body of the Nepalese Acts (Part 1), Kathmandu: His Majesty's Government, Ministry of Law and Justice; p.164.

³⁷ Ibid.

interrogation. As a matter of fact, the legal provision that the deposition must be recorded in the presence of Government attorney has proven meaningless.

Article 14(1) of the Constitution of the Kingdom of Nepal guarantees the right to silent. But generally in practice investigating authority does not recognize this right. The objective of criminal investigation is to determine truth as it can be discovered. Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the facts, and on an equal faithfulness, exactness, and probity in reporting.³⁸ Due to traditional criminal investigation system based on informers and custodial interrogations instead of using a skilled scanning of the crime scene for physical evidence and search for as many witnesses as possible.

Ilam Jail Case

On 16 September 1993, four tried to break out jail in Ilam district by digging through the floor and breaking the wall. A security guard noticed this and shouted a warning. The following morning a policeman noticed the broken wall and tunnel and informed the jailor, the local Chief District Officer and the Deputy Superintendent of Police. All three visited the jail immediately and agreed that legal action should be taken. However, despite a confession by prisoners and their readiness to bear the consequences of their action, jailor ordered the guards to inflict them severe torture.

Of the four prisoners, two- Khagendra Darjee and Chandra Man Rai had tried to escape from jail, while the other two Kiran Majhi and Santosh sunuwar knew about the plan but were themselves not involve in the attempt. Besides these four, two other prisoners Krishna Timalsena and Ganga Gautam who did not even know about the plan were also tortured.

Source: CVICT, Voice, Issue No. 8, December 1993, p.9

With regard to prison and custody reform and supervision, Nepal's prison system denies most of its inmates humane living conditions, adequate food, health care, recreation, communication facilities, access to justice, and gainful employment. Most of the prisons of the country are old dilapidated buildings. Some walls and ceilings are on the verge of collapse, roofs leak and many of the rooms are damp due to the lack of ventilation and the cold earthen floors. The foul smelling toilets make life miserable for prisoners³⁹.

Nepal's prisons are run under an old, outdated legal framework that only views prisons as places of punishment. Out of total 73 prisons in the country most of them are over crowded. Out of 73 prisons 36 prisons have more inmates than their capacity.⁴⁰

S.N.	Prison	Capacity	No. of inmates	Inmates more than capacity
1.	Jhapa	200	216	16
2.	Morang	250	294	44
3.	Sadarkhor	150	238	88
4.	Kaski	60	135	75
5.	Rupandehi	60	186	126
6.	Kailali	70	111	41
7.	Ilam	55	100	45
8.	Makwanpur	35	75	40
9.	Rukum	15	67	52
10.	Jajarkot	10	42	32

Due to the lack of adequate infrastructure, basic facilities, proper management and security arrangement, serious disturbances occur in the prison. In Birgunj prison in December 2000 the

³⁸ Paul B. Wetson et al.,Criminal Investigation: Basic Perspectives, 2000, p 2

³⁹ Stephen J Keeling & Rabindra Bhattarai (ed), **Nepal's Penal System; An Agenda For Change**, Kathmandu: CVICT, 2001,p 81.

⁴⁰ For detail information see Nepalma Manam Adhikarko Sthiti, 2060, National Human Rights Commission, pp.138,139

prisoners rioted after their long-standing complaints about the lack of clothes, bedding and others facilities continued to be ignored. The prisoners claimed that one prisoner was tortured to death by the authorities. The government failed to send any fact-finding mission to investigate.⁴¹

In January 2001 in Nepalgunj prison two prisoners were shot and killed by the prison guards as they agitated for some necessary facilities in the prison. Nepalgunj prison was seriously overcrowded and holds nearly twice as many inmates as its official capacity. The Parliamentary Foreign and Human Rights Committee promptly investigated and found shooting was unwarranted, as the prisoners were not trying to escape. It also found that the prisoners' demands were reasonable "as the inmates were living in poor conditions and in fear".⁴²

Recommendation

- A Commission for the review of the interrogation rules, instructions, methods and practices as well as arrangement of all incarcerations and treatments and correctional programmes shall be established and made functional in regular basis to prevent any occurrence of torture.

⁴¹ Stephen J Keeling & Rabindra Bhattarai (ed), **Nepal's Penal System; An Agenda For Change**, Kathmandu: CVICT, 2001, p.82

⁴² See www.nepalnews.com, visited 19 January 2001

Articles 12 and 13

Right to Complaint and Provisions for Investigation

Under present criminal justice system, the procedure of complaint and investigation of the criminal cases mentioned in the Schedule 1 of State Cases are laid down by State Cases Act, 1992 and National Code (Muluki Ain). Police investigate the cases mentioned in the Schedule 1 of the State Cases Act. In the state cases investigation process begins usually with first information report (Jaheri Darkhasta). Following is the summary of investigation process under existing criminal justice system:

- The victim, his/her family members or any other person who knows about the crime should inform nearby police office about the crime as soon as possible. The first information report filed should contain evidences substantiating the allegation. The first information report should contain date, time and place of crime, name and address of the offender, nature of crime and detailed description of crime. (Section 3 of State Cases Act)
- As per the disclosure on first information report of the suspect of the crime, police arrest him/her. If no name is disclosed in the first information report, then the police begin investigation with its on suspicion of the potential suspect/accused.
- After necessary investigation of the crime on the help of government attorney police files case in the trial court.

As per the Torture Compensation Act, torture cases are being filed before the district courts like other ordinary civil cases by the victim her/himself. It is the part of victim to produce necessary evidences in the court and hire lawyer for his/her defense in order to substantiate his/her claim in the court.

Article 13 of the Convention obliges the state parties to ensure the protection of complainant and witnesses from all ill treatment or intimidation as a consequence of his complaint or any evidences produced during the litigation. As paragraph 103 of the state report also accepts that there is no any legal provision and mechanism for the protection of complainant and witnesses from perpetrators. In most of the torture compensation cases opponents are police personnel. It has discouraged torture victims to complain about torture. If anyone complains about the torture there is high chance of other ill treatment and intimidation to the victim or his/her family and witnesses. Due to the reason witnesses also do not want to go to the court for their testimony in the court.

CVICT Nepal is actively involved from the commencement of TCA in 1996 in providing legal support to the torture victims. The organization is assisting torture victims to file compensation cases and pleading on behalf of torture victims.

Some torture victims are being compelled to withdraw the torture compensation case due to intimidation from opponents. However, it is very difficult to prove in the court that torture victim withdrew the case due to the fear of re-victimization by opponent. Since there is no witness protection mechanism, the rate of presence of witnesses in the court is also very low in torture compensation cases.

Recommendations :

- An independent national institution should be established and made functional to receive complaints, impartially investigate and prosecute the alleged cases of torture before ordinary courts promptly.
- National Human Rights Commission should establish and bring in operation a special wing to handle complaints of torture and recommend the government/ public prosecutor to initiate trial proceeding against alleged perpetrators.

Article – 14**Compensation for Victims**

Article 14 of the Convention requires state parties for providing fair and adequate compensation, the means of full rehabilitation. Article 14(4) of the Constitution of the Kingdom of Nepal 1990 has guaranteed right to the victim of torture to be compensated as prescribes by law. To add life to such constitutional provision, TCA is in enactment since 1996, however, with rooms to be corrected.⁴³

Section 6(1) of TCA holds that a victim of torture can get compensation amount up to rupees one hundred thousand as per court decision. In one hand the upper limit of the compensation amount is extremely low and inadequate and in another the Act has not mentioned the lower limit of the compensation. One survey report has rightly reported: "Conditions in Nepal are worsening, despite the introduction of special, but flawed, legislation to allow torture survivors to claim compensation."⁴⁴ Following table shows the trend of awarding compensation amount by the courts and execution of court's verdict:

S.N.	Name of Victim	Court/Organization	Compensation Amount	Remarks
1.	Thamsher Rai on behalf of Ganesh Rai	District Court Kathmandu	Nrs. 100,000.00	Yet to get compensation
2.	Kedar Nath Mishra	District Court Kathmandu	Nrs. 2000.00	Yet to get compensation
3.	Santosh Kumar Chapagain	District Court Kathmandu	Nrs. 1636.00	Yet to get compensation
4.	Aswin Kumar Dahal	District Court Lalitpur	Nrs. 5000.00	Case is in Appellate Court, Patan
5.	Amar Narayan Lohiya	Appeal Court Butwal	Nrs. 50,000.00	Yet to get compensation
6.	Hari Bahadur Lama	Nawalparasi District Court	Nrs. 5000.00	Yet to get compensation
7.	Durga Prasad Gupta	Appeal Court Hetaunda	Nrs. 3,000.00	Yet to get compensation
8.	Ram Pukar Yadav	District Court Dhanusha	Nrs. 1,000.00	Yet to get compensation
9.	Ram Jeevan Prasad Gupta	District Court Dhanusha	Nrs. 2,000.00	Yet to get compensation
10.	Baikuntha Dahal	District Court Saptari	Nrs. 1,500.00	Yet to get compensation
11.	Deepak Raut	Appeal Court Rajbiraj	Nrs. 1,000.00	Yet to get compensation
12.	Dhanmaya Koirala (Biswakarma)	District Court Sunsari	Nrs. 1,500.00	Yet to get compensation

⁴³ See analysis of Article 2 of this report for detail analysis of the lacunas in the TCA.

⁴⁴ The Redress Trust, *Reparation for Torture; A Survey of Law and Practice in Thirty Selected Countries*, 2003, p.1

13.	Ram Bahadur Bishwakarma	District Court Sunsari	Nrs. 10,000.00	Yet to get compensation
14.	Laxmi Prasad Paudel on behalf of Nirmala Paudel	District Court Morang	Nrs. 50,000.00	CDO rejected the petition submitted to get compensation amount
15.	Jhayendra Prasain	District Court Morang	Nrs. 30,000.00	Yet to get compensation
16.	Hasta Bahadur Chamling	Appeal Court Ilam	Nrs. 5,000.00	Yet to get compensation
17.	Rabindra Silwal	National Human Rights Commission	Nrs. 50,000.00	Victim has already got the compensation amount.

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As per section 9 of TCA after the final verdict made on providing compensation to the victim, the victim or in case of his death, his nearest heir, shall submit an application, accompanied with a copy of the Court's verdict within one year of receiving information of the verdict, to the CDO of the district in which he was detained. The CDO is under the obligation of providing the amount as per the court verdict to the applicant within thirty-five days of the application filed. Reality in practice is played by bitterness: CDOs ignore providing compensation amount by saying that they have no budget for torture compensation. Due to this reason till the date none of torture victims has got compensation amount under TCA.

Article 14 of the Convention obliges the state party that they shall ensure in its legal system that the victim of torture obtains redress and right to fair and adequate compensation including the means for full rehabilitation as possible. It is accepted principles that the compensation amount should be provided for any economically assessable damage resulting from torture such as physical or mental harm, including pain, suffering and emotional distress, lost opportunities including education, material damages and loss of earnings, including loss of earning potential, harm to reputation or dignity, cost require for legal or expert assistance, medicines and medical services, and psychological and social services.⁴⁵

Till now state has no any policy regarding rehabilitation of victims of torture in Nepal. CVICT Nepal an NGO, has been working for rehabilitation of torture victims and reforms of Nepali prisons and welfare of prisoners since 1990. Over these years, CVICT has provided medical, psychosocial and legal support to about 22000 torture victims and medical services to the prisoners in all 73 prisons of the country.⁴⁶

While considering the Nepal's initial state report of Nepal the Committee against Torture in 12/06/1994 recommended for promulgation of compensation legislation. It is positive that Nepal has promulgated TCA but the Act has not covered all the aspects of CAT. Compensation amount provided by the Act is extremely low and it has not addressed the issue of rehabilitation of victim of torture.

Recommendations:

- The amount of compensation should be increased in the scale that it provides full reparation and helps the appropriate rehabilitation of the victims.
- The government should stop re-victimizing torture victims by not providing the decided amount in the name of scarcity of budget.

⁴⁵ The Redress Trust, *Reparation for Torture; A Survey of Law and Practice in Thirty Selected Countries*, 2003, p.16

⁴⁶ CVICT, annual report 2003.

Article – 15

Evidence of Torture

Article 15 of the Convention states “each state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”.

According to Section 9 of the Evidence Act 1974 a statement obtained by any inducement, threat, torture and attempt to torture or against his consent shall not be treated as evidence by the court. Any statement given by accused outside the court confessing the crime shall not be taken as evidence unless the other independent evidences have proved it otherwise. The act also details the procedures for the cross examination of witness and says that the burden of proof shall be on the prosecution.

The judicial trend of conviction and acquittal in criminal trial is confession-centric. Physical evidence are considered as secondary to justify or to deny the evidential value of the confession. A study points out undue importance given to confessions:

In every one of 22 murder cases decided ... and reported in Nepal Kanun Patrika between 1988 and 1998, the accused had confessed to the police. However, many such confessions are made under duress whilst in other cases defendants are instructed by their lawyers to withdraw their confession in court claiming that the initial confession was made under duress. In at least nine of 22 cases the confessions were retracted in court. Nepal's courts often wrongly use initial confession as a major ground for judging the guilt of accused persons. It is likely that if in these nine cases the accused had initially denied the charge then they would have had a good chance of being found not guilty, whether or not they actually committed the crime.⁴⁷

There is no consistent use of confession as evidence in determination of criminal charge. Normally, the courts use confession extracted at police, whether it is voluntary or by compelled manner, as exclusive base for trial and sometimes for conviction. There is absence of single judicial understanding on the validity of statement, which is outcome of torture or threat of torture.

Recommendations :

- As Nepal has adopted adversarial system of criminal justice, there should be clearly established exclusionary rule for confessions.
- The government should provide sufficient scientific and technical support to crime investigators to promote crime investigation based on physical evidence.
- The judiciary should strictly instruct the judges to consider trial and conviction only on the basis of physical evidence.

⁴⁷ Stephen J Keeling & Rabindra Bhattarai (ed), Ibid, p.66

Article – 16

Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

The Constitution of the Kingdom of Nepal 1990 has incorporated cruel, inhuman or degrading treatment or punishment under right to criminal justice, which is a positive feature in apex national legislation. The relevant law namely the Torture Compensation Act 1996 also includes the cruel, inhuman or degrading treatment within the definition of torture and deals accordingly. However, the socio-psychology in Nepali society is full of superstitious beliefs, which consists of cruelty.

No initiative has been taken to address any types of cruel, inhuman and traditional practices such as witchcraft, domestic violence and untouchability. There are many cases of cruel treatment to women in different community in the name of practicing witchcraft. Example in the table would demonstrate the brutal social inhuman treatment to women, where the government took no action to the perpetrators.

Women cover half of the total population in the country. Still they are discriminated in employment, private and public services. The most peculiar situation of women in Nepal is that they are still abused in the name of practicing witchcraft. Women from backward community and mostly the illiterate, widow women are targeted for inhumane behaviors in the name of practicing witchcraft. In most of these cases, even the public and local administration are involved in beating, assaulting and torturing the victim.

Similarly, Nepali society is based on dogmatic male dominated psychology. Women and children are victimized under this background and government has no plan yet to address this problem.

Nepal is facing various forms of violence in current armed conflict. There are serious cases of cruelty and barbaric practice in the name of revolution by Maoists. It has resulted a number of problems including displacements, disabilities and orphanage. There is a need for specific programme by the government. The armed conflict requires to be tackled by political tactics, however, the government is misappropriating public resources on arms and ammunitions, instead of managing shelter, food and human care of these victimized people with appropriate allocations.

The definition of torture by the Convention and the TCA does not include the torture committed by recognized armed opposition group. Likewise, there is no law to address this aspect that such act constitute crime and provide remedy to victim and punishment to the offender. Due to this reason many torture victims are unable to get justice and the situation of impunity is widespread. Ultimate responsibility to protect people from any kind of human rights violation is on state; therefore state should take responsibility for the events of torture inflicted by government security forces or by armed opposition group or by others in any form.

Birgunj prison case

In Birgunj prison in December 2000 the prisoners rioted after their long-standing complaints about the lack of clothes, bedding and other facilities continued to be ignored. The prisoners claimed that one prisoner was tortured to death by the authorities. The government failed to send any fact-finding mission to investigate.⁴⁸

Gaps and Challenges:

- No program to address the prevalent social forms of inhuman, degrading treatments has been initiated yet.
- No appropriate legislative, administrative and judicial remedies are set in place to combat these ill treatments institutionally.
- No relief and redress to already victimized people.

⁴⁸ ibid

Atrocities Committed by Maoist

"On 29th March 2002, 15 to 20 Came to Dhan Bahadur's house at about 10.00 PM and demanded Nepali rupees 13,000.00 (US\$ 175) from him. When he failed to provide the amount, they tied his hands and kicked him in front of his brothers (whose hands were also tied) and sister. He was beaten so severely with wooden stick and iron rods that both of his legs were broken. He became unconscious, so he did not know how long they beat him afterward. When he gained consciousness, he found lying on the floor and his dog was licking the blood trickling from his mouth.

Source: INSEC, Yearbook 2001.

Bimali Pariyar, 69, resident of Rampur VDC-3, was expelled by villagers from the village on charge of practicing witchcraft, on 17 May. Victim shifted to her internal home.

Source: INSEC Human Rights Year Book 2004

Chanuwa Devi, 45, of Gopalgunj VDC-2 was assaulted by villagers on charge of practicing witchcraft on 13 July. Victim's husband Jayanarayan Jha, 50, was also injured in the incident.

Source: INSEC Human Rights Year Book 2004

Recommendation :

- Government should take legislative and policy measures in order to address the issues of other cruel, inhuman and degrading treatment prevalent in the society.
- Torturous activities committed by non-state actors such as Maoists should be defined as crime and compensation to the victims to be guaranteed.

Part III

Conclusion and Recommendations

Conclusion and Recommendations:

This report reflects the trend of existing continuous, routine and systematic practice of torture and weaknesses of the government in combating it properly. Socially deep rooted acceptance of the use of torture in the name of investigation of crime and traditional security and justice machinery accustomed with it continue to create environment to flourish this evil in Nepal.

For real implementation of the Convention, serious attempts with specific programmes and commitment of the government with sacred political will are essential to be undertaken. Due to the severity and the intensity of the problem the real picture could not be sketched numerically and in wordy accounts.

The state report does not recognize the intense practice of torture but there are several allegations of severe cases of torture contrasted with the state report. Therefore, the government should demonstrate its willingness to offer an international surveillance to assure its commitment to the real implementation of the convention. For that following steps are recommended to be followed by the government:

- Implement all the recommendations made in Part II in respective articles.
- Work together with the actors of non-governmental sectors, winning their hearts and taking them as working partners.
- Declare the competence of Committee against Torture, in accordance with Article 21 of the Convention, to receive and consider communications to the effect that the other State party would claim against non-fulfillment of its obligations under Convention.
- Declare the competence of Committee against Torture, in accordance with Article 22 of the Convention, to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of violations by it.
- Declare a readiness for co-operation for the examination of any information if the Committee wishes to invite its submissions.
- Sign and access the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Sign and access the Rome Statute of International Criminal Court to demonstrate its willingness in prosecuting the alleged perpetrators of committing crime against humanity under its jurisdiction.
- Sign and access the Protocol Additional to Geneva Conventions (Protocol II) to demonstrate its willingness to protect the victims of armed conflict of non-international character as Nepal is facing a critical situation of internal armed conflict.

Schedule 1

Member Organisations of Human Rights Treaty Monitoring Coordination Committee

Schedule 2

Name of Participants of National and Regional Workshops

B. Name of participants of regional consultation meeting in Pokhara on 3 July, 2004.

S. N.	Name	District/Organisation
1.	Hon. Yam Narayan Dhital	Judge, Appellate Court, Pokhara
2.	Mr. Krishna Prasad Lamsal	Acting Chief District Officer, Kaski
3.	Mr. Shyam Kunwar	Kaski, INSEC
4.	Mr. Ishwor Khatri	Gorkha
5.	Mr. Krishna Prasad Basyal	Palpa, INSEC
6.	Mr. Purushottam Ghimire	Rupendehi, FOSAD
7.	Mr. Lal Bahadur Bhandari	Kapilbastu, HURIESC, Nepal
8.	Mr. Krishna Prasad Adhikari	Lamjung
9.	Mr. Prakash Chandra Bhatarai	Tanahu
10.	Mr. Mr. Yam Prasad Paudel	Teacher, Parbat
11.	Mr. Hem Mohan Bhattacharai	President, Appellate Court Bar Association, Pokhara
12.	Mr. Dinesh Regmi	Journalist, Kantipur Daily
13.	Mr. Rudra Prasad Bhatta	Journalist, Micronews Daily
14.	Mr. Ghanashyam Khadka	Myagdi
15.	Mr. Dhana Bahadur Nepali	Dalit NGO federation, Pokhara
16.	Mr. Ratna Bhattachan	Nari Jagaran Kendra, Pokhara
17.	Ms. Bishnu Kala Bhandari	Bal tatha Mahila Sashaktikaran Samaj, Pokhara
18.	Mr. Ganesh Shrestha	INSEC, Pokhara
19.	Mr. Bhanu Parajuli	RRN, Pokhara
20.	Mr. Yam Prasad Paudel	Press Nepal, Parbat
21.	Mr. Dinesh Shrestha	CWIN, Pokhara
22.	Ms. Devi Thapa	Manawi, Syanja
23.	Mr. Madhu Sudan Devkota	HR Radio Listeners' Club, Pokhara
24.	Mr. Punya Paudel	President, NFJ, Pokhara
25.	Mr. Rishi Baral	Journalist, Annapurna Post
26.	Mr. Basanta Baral	NGO federation, Pokhara
27.	Mr. Prem Wagle	Kopila Nepal, Pokhara
28.	Mr. Ram Prasad Subedi	GONESA, Pokhara
29.	Mr. Kamal Prasad Aryal	Human Rights Protection Forum Pokhara
30.	Mr. Milan Shrestha	Advocate, Nepal Bar Association, Human Right Project, Pokhara
31.	Mr. Ram Prasad Ghimire	Advocate, Parwat
32.	Mr. Hari Prasad Subedi	Lecturer, Prithvi Narayan Campus, Pokhara
33.	Mr. Ram Krishan Gyawali	Journalist, Pokhara F. M., Pokhara
34.	Mr. Om Hamal	Nepal One Television
35.	Ms. Durga Paudel	Nari Sewa Kendra, Pokhara
36.	Mr. Tek Nath Baral	Human Right activist, Pokhara
37.	Mr. Bishnu Prasad Baral	Srijana Bikash Kendra, Pokhara
38.	Ms. Sabanam Sharma	INSEC, Pokhara
39.	Ms. Gaj Kumari Gurung	Mahila Tatha Samudaik Sachetana Samaj, Pokhara
40.	Mr. Govinda Gautam	INSEC, Baglung
41.	Mr. Rudra bahadur Thapa	Journalist, Adarsha Samaj Dainik, Pokhara
42.	Mr. Som Raj Thapa	Regional Coordinator, INSEC, Pokhara
43.	Mr. Ramesh Paudel	Journalist, Pokhara
44.	Mr. Pradip Paudel	Journalist, NTV, Pokhara
45.	Mr. Khaga Raj Acharya	Nepal Human Right Organisation, Kaski
46.	Mr. Mr. Madhu Panthi	INSEC, Pokhara
47.	Mr. Krishan Thapa	Journalist, Nayabazar Saptahik
48.	Mr. Rajendra Ghimire	CVICT Central Office, Kathmandu

B. Name of participants of regional consultation meeting in Biratnagar on 6 and 7 July, 2004.

S. N.	Name	District/Organisation	Remarks
1.	Hon. Shyam Bahadur Pradhan	Judge, Appellate Court, Biratnagar	
2.	Hon. Raghav Lal Baidha	Judge, Appellate Court, Biratnagar	
3.	Lt. Col. Bindu Gautam	Eastern Division, Headquarter, Itahari	
4.	Mr. Sher Bahadur Karki	SP Biratnagar	
5.	Dysp. Kamal Shrestha	Armed Police	
6.	Mr. Amit Pyakurel	Royal Nepal Army	
7.	SI. Ramesh Bista	District Police Office	
8.	Mr. Yagyan Sharma	FNJ	
9.	Mr. Kedar Bhandari	NBA	
10.	Dr. Bhddhi Pandey	CVICT, Nepal, Eastern Regional Office	
11.	Mr. Somnath Susheli	FNJ, Ilam	
12.	Mr. Bijaya Bhattarai	FNJ, Ilam	
13.	Mr. Lila Ballav Adhikari	Advocate, Morang Bar Association	
14.	Mr. Dipen Neupane	INSEC	
15.	Mr. Prakash Adhikari	HURF, Ilam	
16.	Mr. Mahananda Sapkota	Image Metro TV	
17.	Mr. Mahendra Bista	Darshan Daily	
18.	Mr. Babu Ram Khatiwada	Prison Section, Morang	
19.	Mr. Ananta Raj Neupane	Space Time Daily	
20.	Mr. Sunil Neupane	Annapurna Post, Daily	
21.	Mr. Benup Raj Bhatarai	FNJ, Ilam	
22.	Mr. Gopal Gartaula	Spacetime Daily, Jhapa	
23.	Mr. Chinta Mani Dahal	Kantipur Daily, Jhapa	
24.	Mr. Gopal	Gorkhapatra Daily, Jhapa	
25.	Mr. Rosan Sanbo	Saptakoshi FM, Ilam	
26.	Mr. Satendra Jabaju	Samachar patra, Ilam	
27.	Mr. Umesh Gurung	FNJ, Ilam	
28.	Mr. Kailash Nath Kharel	District Administration Office, Morang	
29.	Ms. Maya Dhimal	CVICT, Biratnagar	
30.	Mr. Bharat Pokhrel	SAP-Nepal, Biratnagar	
31.	Mr. Mohan Manandhar	NTV, Biratnagar	
32.	Mr. Shiba Hari Bhattarai	Suchana Weekaly, Saptari	
33.	Mr. Devi Prasad Bhandari	Prayas, Biratnagar	
34.	Mr. Khemraj Upadhyaya	Action Aid Nepal	
35.	Mr. Tul Bahadur Shrestha	Advocate, Morang	
36.	Mr. Bishal Shrestha	CWIN-helpline	
37.	Mr. Indra Rajbanshi	Kanchanjangha FM, Biratnagar	
38.	Mr. Byas Shankar Upadhya	Spacetime Daily, Saptari	
39.	Ms. Sakuntala Baral	INSEC	
40.	Mr. Yadav kumar K.C.	Post Graduate Campus, Biratnagar	
41.	Mr. Rajendra Thapa	Dig. Office, Biratnagar	
42.	Mr. Ishwar Chandra Dhungel	Sunsari	
43.	Mr. C. B. thapa	CVICT, Biratnagar	
44.	Mr. Khila Nath Niraula	FOHREN, Morang	
45.	Mr. Bhim Ghimire	Kantipur Daily, Biratnagar	
46.	Mr. Ramesh Chandra Adhikari	Press Chautari Nepal	
47.	Mr. Bal Krishna Acharya	Advocate	

48.	Mr. Pawan Kumar Jaishwal	Human Rights Officer	
49.	Mr. Prabin Kumar Karki	Advocate, Saptari	
50.	Mr. Surendra Prasad Yadav	HUCODAN, Saptari	
51.	Mr. Hari Prasad Koirala	Gorkhapatra Daily, Sunsari	
52.	Mr. Medani Prasad Sedhai	Advocate	
53.	Mr. Narayan Wasti	Advocate	
54.	Mr. Ganesh Subedi	Advocate	
55.	Mr. Bandhu Pokhrel	Blast Times	
56.	Mr. Dharma Raj Dhakal	Kanchanjungha F.M.	
57.	Ms. Rupa Bhattarai	WOREC, Biratnagar	
58.	Mr. Sushila Thapa	WPREC, Biratnagar	
59.	Mr. Khagendra Shrestha	Advocate	
60.	Mr. Shyam Babu Kafle	CVICT, Nepal, Kathmandu	
61.	Mr. Tirtha Sigdel	Samacharpatra Daily, Morang	
62.	Mr. Laxmi Guragain	Gorkhapatra	
63.	Mr. Jagat Thapa	CVICT, Biratnagar	
64.	Mr. Rajendra Dhakal	CVICT, Biratnagar	
65.	Mr. Tanka Khanal	Rajdhani Daily	
66.	Mr. Bikram Luintel	Nepal Samacharpatra	
67.	Dr. Bidur Osti	CVICT, Nepal	
68.	Mr. Rajan Sharma	CVICT, Nepal	
69.	Mr. Atul Pokhrel	CVICT, Biratnagar	
70.	Ms. Balika Nepal	CVICT, Biratnagar	
71.	Mr. Dikshananda Nepal	RRN	
72.	Ms. Sujata Sharma	CVICT, Biratnagar	
73.	Ms. Sushila Karki	Advocate	
74.	Mr. Devi Prasad Bhandari	Prayas Nepal	
75.	Hon. Thakur Prasad Sharma	District Judge, Morang	
76.	Ms. Ranju Adhikari	CVICT, Biratnagar	

C. Name of participants of regional consultation meeting in Nepalgunj On June 17-18, 2004.

S.N.	Name	District/Organisation	Remarks
1.	Hon. Judge Rishi Raj Joshi	Appeallate Court Nepalgunj	
2.	DIG Keshab Prasad Baral	Regional Police Office, Nepalgunj	
3.	Acting Chief District Officer Beni Madhav Gyangali	District Administration Office, Banke	
4.	Mr. Pravash Chandra Jha	Chief, Mid-Western Regional Office, National News Agency, Nepalgunj	
5.	DSP Ram Kripal Saha	District Police Office, Banke.	
6.	Mr. Bhola Mahat	Co-ordinater, INSEC, Nepalgunj	
7.	Mr. Krishna Khanal	Journalist, Channel Nepal	
8.	Ms. Shrijana Achrya	Women Communication Group	
9.	Mr. Jivan Sejuwal	Journalist, Nepal Samachar Patra, Nepalgunj	
10.	Mr. Sharad Adhikari	Journalist, Space Time, Dang	
11.	Mr. Narendra KC	Journalist, Yug bodh, Dang	
12.	Mr. Gopi Budha	Journalist, Nepal One TV	
13.	Mr. Narayan Subedi	Representative Human Rights Year Book, INSEC	
14.	Mr. Bhola Singh Hamal	National Council Member of Nepal Bar Association.	
15.	Mr. Madhav Prasad Sharma	Member, Appeal Court Bar	

		Association, Nepalgunj	
16.	Mr. Bashudev Gyangali	Advocate	
17.	Mr. Ratna Khatri	President, Free Student Union, Mahendra Multiple College, Nepalgunj.	
18.	Mr. Megh Raj Oli	Midwest, Daily	
19.	Mr. Ramesh Aaidi	Reporter Nepal Samachar Patra, Humla	
20.	Ms. Bimala Bista	Reporter, Nepal Samachar Patra,	
21.	Mr. Sam Thapa	Reporter, Nepal Samachar Patra, Nepalgunj	
22.	Mr. Ganesh Chaudhari	Kantipur Daily, Kailali	
23.	Mr. Raju Shakya	Reporter, Nepal Samachar Patra, Jajarkoat	
24.	Mr. Netra Kala Shahi	SAC	
25.	Ms. Krishna Adhikari	Channel Nepal, TV	
26.	Mr. Thakur Singh Tharu	Lawyer	
27.	Mr. Namaskar Shah	President, Good Governance	
28.	Mr. Kamal Panthi	Reporter, Kantipur Daily	
29.	Mr. Arjun Kumar Oli	Reporter, Nepalgunj Express	
30.	Mr. Gourab Dhakal	Reporter, Janamat Half-weekly	
31.	Mr. Bhupendra Shahi	Reporter, Gorkhapatra, Dailekh	
32.	Mr. Bhes Raj Basnet	Reporter, Nepali Express Daily.	
33.	Mr. Shankher Khanal	Reporter, Nepal Yugbodh Daily.	
34.	Mr. Purna Thapa	Reporter, Dhangadhi Post Daily.	
35.	Mr. Lal Bahadur Chaudhari	UN Society, Nepalgunj	
36.	Mr. Janak Nepal	Kantipur Daily	
37.	Mr. Bishnu Pokhrel	Advocate	
38.	Mr. Purna Lal Chuke	Non-Governmental Organization Federation, Nepalgunj	
39.	Mr. Dirgharaj Upadhaya	Reporter, Rajdhani Daily, Dhangadhi	
40.	Mr. Dhana Raj Swarnkar		
41.	Mr. Shalik Ram Sapkota	Member of Nepal Bar Association Human Rights Committee	
42.	Mr. Krishna Bhandari	Editor, Krishnasar Weekly.	
43.	Ms. Sunita Sharma	Advocate, Center for Legal Research and Resource Development (CeLRRd),	
44.	Mr. Umid Bagchand	BBC Nepali Sewa	
45.	Mr. Shuk Rishi Chaulagain	Reporter, Space Times Daily	
46.	Mr. Durga Thapa	Reporter, Nepal Samachar Patra, Surkhet	
47.	Mr. Surya Mani Gautam	Reporter, Annapurna post, Surkhet	
48.	Mr. Kamal Panta	Reporter, Kantipur Television, Surkhet	
49.	Mr. Moti Poudel	Reporter, Kantipur Daily, Surkhet	
50.	Mr. Chitra Singh Gaunle	Reporter, Rajdhani Daily Surkhet	

51.	Mr. Om Thapa	INRUDEC, Kohalpur	
52.	Mr. Sudip Thapa	INURDEC, Kohalpur	
53.	Mr. Hari Prasad Gyawali	Secretary, Appeal Court Bar	
54.	Mr. Pratap Kumar Gautam	Editor, Babai Weekly	
55.	Mr. Shyam Bahadur Thapa	Bardiya District Court Bar Association	
56.	Mr. Uma Nath Mainali	Bardiya District Court Bar Association	
57.	Mr. Bishnu Devkota	Reporter, Gorkhapatra Daily	
58.	Mr. Kusum Ranabhat		
59.	Mr. Pravat Kumar Thakuri	President, Multiple Service Center	
60.	Mr. Dhruv Bashyal	President, Appeal Court Nepalgunj	
61.	Mr. Prakash Upadhaya	Mid-West Regional Secretary, Non Governmental Organization Federation	
62.	Mr. Surya Mohan Sapkota	Advocate	
63.	Mr. Balkrishna Oli	President, Alliance for Human Rights and Social Justice, Nepal (ALLIANCE-Nepal) Bardiya	
64.	Mr. Surendra Kafle	Reporter, Annapurna Post, Banke	
65.	Ms. Geeta Adhikari	Sub-editor, Bardiya Times	
66.	Ms. Rekha Kushum Regmi	Representative, National News Committee, Dang	
67.	Mr. Netra K.C.	BBC Nepali Sewa	
68.	Mr. Jhalak Gaire	Secretary, Journalist Federation	
69.	Mr. Ramesh Thapa	Advocate	
70.	Dr. Bidur Osti	CVICT, Nepal Kathmandu.	
71.	Dr. Gyan Shretha	CVICT, Nepalgunj	
72.	Mr. Keshev GC	CVICT Nepal, Bardiya	
73.	Mr. Suresh Kumar Gautam	CVICT, Nepalgunj	
74.	Ms. Maya Pandey	CVICT, Nepalgunj	
75.	Mr. Prem Khatri	CVICT, Nepalgunj	
76.	Mr. Ramesh Karki	CVICT, Nepalgunj	
77.	Ms. Vimmi Panthi	CVICT, Nepalgunj	
78.	Mr. Tek Bahadur Khadka	CVICT, Nepalgunj	

C. Name of participants of national consultation meeting in Kathmandu 19 September 2004.

S. N.	Name	District/Organisation	Remarks
1.	Ms. Bidhya Chapagain	INSEC	
2.	Mr. Upendra Poudel	INSEC	
3.	Mr. Milan Rai	Nepal Bar Association	
4.	Mr. Padam Roka	Nepal Bar Association	
5.	Mr. Dinesh Neupane	Victim Support and Rehabilitation Centre	
6.	Mr. Ram Kumar Thapa	National Human Rights Commission	
7.	Mr. Bholu Nath Dhakal	Appellate Court Patan	
8.	Mr. Gyanendra Karki	Advocate	
9.	Mr. Bala Bhadra Banstola	Kathmandu District Court	
10.	Mr. Kundan Aryal	General Secretary, INSEC	
11.	Mr. Bhagirath Yogi	CEHURDES	
12.	Ms. Surya	PAM	
13.	Mr. Hari Bahadur Karki	AJAR, Nepal	
14.	Mr. Devi Prasad Upreti	CAP-CRON	
15.	Mr. Kabiraj Khanal	Under secretary, Ministry of Home Affairs	
16.	Mr. Trilok Shrestha	Ministry of Home Affairs	
17.	Mr. Madhav Kumar Basnet	Advocate, Supreme Court	
18.	Mr. Tanka Rai	CPN-ML	
19.	Mr. Nil Kantha Bhattarai	Peoples Right Protection Forum	
20.	Mr. Bhimarjun Acharya	Advocate, Supreme Court	
21.	Mr. Deepak	National Human Rights Commission	
22.	Ms. Tejendra Subedi	Reporter, Roadmap Weekly	
23.	Mr. Koshal Chandra Subedi	Ministry of Law, Justice and Parliamentary Affairs	
24.	Mr. Dev Bahadur Kunwar	Gorkha Patra Daily	
25.	Mr. Deepak Sharma	Bajra Prahar, Weekly	
26.	Mr. Mukti Nath Mandal	Nepal Sadbhawana Party	
27.	Dr. Bijaya Singh Sijapati	Nepal Law Campus	
28.	Mr. Shyam babu Kafle	Advocate, CVICT, Nepal	
29.	Mr. Pitamber Sigdel	Annapurna Post	
30.	Mr. S. P. Acharya	Journalist	
31.	Dr. Krishan Prasad Oli	Chairman, Centre for Promotion of Law and Environment	
32.	Mr. Chhatra Pradhan	Rt. Police Officer	
33.	Mr. Tara Karki		
34.	Mr. Rajan Sharma	Journalist	
35.	Mr. Laxmi Guragain	Journalist, Gorkhapatra Daily	
36.	Mr. Dilip Pandey		
37.	Mr. Satya Narayan Adhikari	Advocate, CVICT, Nepal	
38.	Mr. Nagendra Kumar Rai	Nepal Bar Association	
39.	Mr. Suresh Kumar Gautam	Advocate, CVICT, Nepalgunj	
40.	Mr. Rup Narayan Shrestha	Advocate, FWLD	
41.	Mr. Shankar Shah	Journalist	
42.	Mr. Hemang Sharma	CVICT, Nepal	
43.	Mr. Narayan Adhikari		
44.	Mr. Subodh Pyakurel	Convener, HRTMCC	
31.	Dr. Krishan Prasad Oli	Chairman, Centre for Promotion of Law and Environment	
45.	Mr. Krishna Pahadi	HURPES	
46.	Mr. Agni Kharel	Legal Advisor, CVICT, Nepal	
47.	Dr. Bhogendra Sharma	President CVICT, Nepal & IRCT	
48.	Mr. Rajendra Ghimire	Legal Coordinator, CVICT, Nepal	
49.	Mrs. Jamuna Poudyal	Advocate, CVICT, Nepal	
50.	Mr. Phanindra Adhikari	CVICT, Nepal	
51.	Ms. Ranjana Thapa	Nepal Bar Association	
52.	Dr. Sita Maiya Singh Thapa	Faculty of Law	
53.	Mr. Pradeep Ghimire	CEHURDES	
69	54. Mr. Rameshwor Prasad Koirala	Advocate, Makawanpur	pure is morally, legally & politically wrong
55.	Mr. Jaya Prasad Paudel	CVICT, Nepal	
56.	Mr. Ran Deep Khadka		
57.	Mr. Shiva Kumar Karki	SOFYL	
58.	Ms. Shreejana Pokhrel	INHURED, International	

Schedule 3

Summary of some Representative Torture Cases During the Reporting Period

Case 1

Name of Victim : Ms. Teelu Ghale, 26, (Female)
Occupation : Businesswomen
HR Violator/s : Nepal Police Personnel
Summary of Case : Nepal Police arrested Teelu Ghale on 22 September 1993. Police took her to the Office of the Deputy Superintendent of Police at Hanuman Dhoka, Kathmandu for questioning. It is known that police reportedly tried to extort money from her, threatening that she would be sold along with other girls to the brothels in India. Teelu Ghale was beaten, had electric current applied to her wrists and almost raped. A police constable who took pity on her allowed her to telephone her mother without the knowledge of his superiors.

Teelu Ghale's mother visited the Hanuman Dhoka police station twice, but was refused permission to see her daughter. On September 26, Teelu Ghale's mother filed a *habeas corpus* petition in the Supreme Court which then issued orders to the police to give a written reply within 24 hours.

On 30 September the police responded to the court. They denied that they had arrested Teelu Ghale. That morning they secretly transferred her to a police station in the near by town of Bhaktapur at 4 AM., whether according to testimony, she was further abused and denied food for two days. Police tried to extort NRs. 130,000.00 in exchange for her freedom. She was kept in a quarter of police officer where she feared she would be raped.

On 3 October, her lawyers declared that it was the duty of state to find Teelu Ghale and produce her either dead or alive. They further demanded the right to check every police station, jail, and border outpost in Nepal in order to find her. On the same date the Supreme Court ordered the Central Regional Police Office to produce Teelu Ghale within 48 hours. On the same day an unknown person accused of drug trafficking claimed that Teelu Ghale has been working with him.

On 5 October the police produced Teelu Ghale before the Supreme Court stating that she had been charged before the District Court of selling a gram of heroin. They further claimed that she had been arrested on the same day when she was charged.

An investigation was ordered by the Supreme Court in Which Teelu Ghale's description of the rooms in which she had been detained in was verified. The Supreme Court concluded that she had been arrested in September on the date she had given.

Teelu Ghale then transferred to a detention center in Dilli Bazar, Kathmandu for her own safety. She was finally released on 2 November.

The saddest part of this story is that no action has been taken to investigate the allegations of torture and prosecute those perpetrators.

Case 2

Name of Victim : Mr. N an eight year old Tibetan boy
HR violator/s : Personnel of Immigration Office
Summary of Case : Mr. N left Tibet from Kathmandu with a Nepali guide to join his grandmother who was already on her way to Kathmandu. They were arrested on 5 January 1994 on the border at Tatopani. As soon as he was surrounded by strangers shouting at him, he started crying. He was then brought to the Immigration Office in Kathmandu and locked up in a room along with another Tibetan lady. The security men did not hurt him physically. However, they tried to terrorize him by making gesticulations of boxing and kicking. Not knowing Nepali, the boy was unable to communicate and could not say anything. The room they were locked in was very dark and dirty. There was no bed or any bedding. They were compelled to sleep on the bare floor. The little boy was afraid that that insect would emerge to attack him. Mosquitoes filled the room and he also saw centipede crawling across the room. They were not given any food. They were expected to buy their food. After learning of his arrest his grandmother came to visit him. She gave him some money which he used to buy something to eat.

The other woman proved to be a source of comfort. She was soon released and he was then left alone. Once alone, he started crying and wanted to be with his grandmother. He was left alone all the night. Next day another monk shifted to his room. This little boy was detained in such conditions for seventeen days. Due to this the boy was unable to sleep at night with the lights off as he was too afraid of the dark. He had nightmares of strange people coming to take him away and killing him. Every night he woke up screaming for his father. After documenting the case, CVICT Nepal carried out routine medical investigations and started psychological counseling.

Case 3

Name of Victim : **Mr. Darpan Barma, (17),**
 Chuchchepati, Chabahil, Kathmandu Metropolitan City.
Occupation : High School Student
HR violator/s : Nepal Police Personnel
Summary of Case : Darpan Barma, son of Dhurba Bahadur Barma, left his home at about 2 PM on 16 October 1996 and went to the area of Gopi Krishna Cinema hall; about 15 minutes walk from his house. Near the cinema hall two boys were quarrelling. Darpan Barma went there and tried to cool down both of them. At the meantime some body phoned Gaushala Police Office to inform about the quarrel. Two policemen came from police office and chased Darpan. Darpan Barma ran east ward towards the cinema hall gate, slipped and fell face down near the gate.

Then police running after him got hold of Darpan and kicked him twice on his back. One of the policeman hit Darpan on his back with his elbow. They boxed him couple of times. The policemen took Darpan towards taxi but Darpan was pleading them that he was innocent and has not done anything. Policemen put Darpan into the waiting taxi and was taken to the police office, Gaushala.

On the same day at 5.30 PM, Darpan was taken to emergency ward of Bir Hospital by police saying that Mr. Barma was injured during fight with group of boys. On medical examination, the doctor at the hospital declared Mr. Barma dead. Parents of Darpan alleged that Darpan had died after infliction of torture by the police in Gaushala police office. Local

People at Chabhill protested against the alleged death of Darpan Barma in police custody due to severe torture.

After a fact finding mission from CVICT Nepal team demanded an impartial, objective investigation of the event by government to find out the culprits from among the police. But government never conducted investigation of the case.

Case 4

Name of Victim : **Mr. Madhav Adhikari, 25**
Marpak VDC ward no. 7, Dhading

Occupation : Student

HR Violator/s : Government Security Forces

Summary of Case : Mr. Adhikari was a student of Bachelor Level studying in Mahendra Ratna College, Tahachal, Kathmandu. On 7 June 2002 at about 12 PM at night while he was sleeping some one knocked his door from outside. After regular knocking he opened the door and he saw about 50-60 persons, among them 5-6 persons have put black cloth on their mouth to cover their face. When he opened the door they entered into his room and asked his identity card and searched his room. They threatened him to stay quiet and took him out and blindfolded and both hands were tied backside and put him into their vehicle. They put him on the floor of vehicle making backside up and two persons put their feet on his back. After about half an hour they took him to army barrack but he was not confirmed which was the place because he was blindfolded. Then they asked to put off shirt, pant and other clothes except under wear. Then they started asking questions relating to Maoist activities. Mr. Adhikari answered that he did not know about Maoist activities and he was not involved in it.

They started further torturing him by beating sticks on the hands tied back, pour cold water in his body and compelled him to sleep in a rough place. They kept on beating him randomly in different parts of body about half an hour. On the next day they sprayed water from pipe on his nose and mouth for half an hour. Then they applied electric current to his right arm. He was lied down on the cement floor and poured water over the body, beaten by stick on the backward tied hands, beat by the pipe on the arms, urinated on the mouth when asking for water, placed on the ground without bed sheet, irregular food, poured the water from the pipe to mouth and nose by making upward laying style and instantly charged with the electric current, hanged with the tree in opposite state, and taken time and again took him little far in the van saying as taken to kill and got back and leave, etc. Then on 7 July 2002 he was transferred to another barrack, No. 1 Bahini, Balaju in blind folded state. He was also tortured by charging with the electric current, beat on the back with the stick. On 18 July 2002 he was handedover to the police office, Shorhakhutte with eyes opened and from there he was taken to the District Police Office (DPO), Kathmandu. In DPO, he was again tortured. He was taken into a room upstairs, blind folded and joined his both hands they beat by the stick, and beaten by punch and kicked randomly various parts of his body. After then, saying arrested on 24 July 2002, with detention order on 25 July 2002, he was sent to jail.

On the help of CVICT Nepal Mr. Adhikari filed a torture compensation case at the Kathmandu District Court. Till now the case is *sub judice* in the same court.

Case 5

Name of Victim : Mr. Jhaindra Prasain
 Mrigauliya VDC, Ward no. 8, Morang.
Occupation : Social worker
HR violator/s : Nepal Police Personnel
Summary of Case : On 4 November 2002, at about 7.30 PM, Mr. Prasain and one of his friends were returning home from Salakpur Bazar. On the way Police Mobile Van of Area Police Office came near to them and Sub-Inspector (SI) Bishnu Khadka came out from the van and started verbally abusing them. Then Mr. Khadka started beating the friend of Prasain. After some time Prasain's friend ran away due to the fear of police torture.

SI and other police started beating Mr. Prasain with boot, hand and butt of gun. After beating some time police personnel put Mr. Prasain in to van and took him to Belbari police office. On the way to the Belbari, he was beaten continuously. The police did not give him any cause of arrest and did not inform about this to his family. He was kept in the custody without any charge in the court. Mr. Prasain could not remember exact sequence of torture inflicted upon him at the custody since he fell unconscious due to torture there.

According to the other inmates of the custody the police tortured him till midnight then washed his blood bathed body at around 1.00 AM at midnight. Witness to this event were Mr. Raju Magar, Mr. Sagar Thapa, Mr. Subash Thapa who were in the same custody room in other charges.

At the morning of November 5, 2002 some family members of Mr. Prasain came to the police station to know the whereabouts of Mr. Prasain but the police denied his arrest. At about 12.00 AM Mr. Prasain was brought to Belbari where a large group was gathered and agitated for the release of innocent Mr. Prasain. Then Mr. Prasain was admitted to Birat Nursing Home for the treatment. Due to the torture Mr. Prasain sustained many physical injuries.

Action taken: On 2 December 2002 Mr. Prasain filed torture compensation case with the help of CVICT Nepal to District court Morang. On the case he claimed RS. 100000.00 Compensation and departmental action to the perpetrator. Deciding the case on 21 June 2003 the court awarded NRs. 30000.00 torture compensation to the victim and recommended for departmental action for the perpetrator. He has yet to get the compensation amount.

Case 6

Name of Victim : Mr. Hom Bahadur Bagale, 38
 Lamjung District, Sibar Village Development Committee, Ward No. 3.
Occupation : Sub-Inspector (SI), (Technical) Nepal Police
HR Violator/s : Superintendent of Police, Kuber Singh Rana (hereinafter referred to as "SP Rana"), Kathmandu District Police Office, Hanumandhoka (KDPO), Inspector Yagnya Binod Pokharel (hereinafter referred to as "I. Pokharel") of KDPO, Inspector, Ganga Panta (hereinafter referred to as "I. Panta") of KDPO and Deputy Superintendent of Police, Khadka Singh Gurung (hereinafter referred to as "DSP Gurung") of Central Police Band Office (CPBO), Maharajanj, Kathmandu.

Summary of Case : The victim was working at his office on 23 December 2002. DSP Gurung, Chief of his office, orally ordered him to go to Tribhuvan International Airport (TIA) to fetch gold sent to the DSP by his relatives, working in

Brunei. The victim humbly rejected to do so because it was not his duty. Then, what happened and who went to fetch the gold the victim did not know.

On 28 December Gurung ordered him to go to Kathmandu District Police Office (KDPO) to meet Inspector Yagnya Binod Pokharel. The victim went to KDPO to meet I Pokharel. While the victim met I. Pokharel at his office room I. Pokharel shot the door and beat him with a bamboo stick without saying a word. At that time the victim was on Police uniform. He was beaten approximately one hour on different parts of his body. Only then he asked where was the DSP Gurung's gold. He told the truth. But the I. Pokharel turned deaf ear about the truth and blamed him either the victim himself must have taken or he must have employed others to take the gold. He further added that DSP Gurung told him that he had not told anyone save the victim.

Then he was put under the custody of Hanumandhoka. I. Pokharel telephoned to Sub-Inspector, Ram Kumar Thapa, of Telephone Section of the victim's office at Maharajganj and ordered to bring his civil dress.

On 29 December he was handcuffed and taken into the office room of SP Rana. He was beaten by SP Rana and I. Pokharel with cane sticks. Then they ordered to roll a heavy cement log on his both thighs. During the period of torture he lost his sense many times. Then they again put him under custody. At 1: 00 a.m. they took him into the investigation room and handed over to I. Panta. She beat him again. Then he was blindfolded and beaten randomly again about 15 minutes.

At 1:30 a. m. six police personnel led by I. Panta took him out and put him into a red-colored Jeep and two police pointed pistols at his head and I. Panta threatened him if he cries he will be shot . They took him at his home. They threatened his family if they communicated it to others they would also face the same fate as the victim. They searched his home and surrounding. They did not get anything from there. Then they took him back.

They had not given food and water since the day of arrest. On 30 December and 1 January, other detainees shared theirs food to him.

On 2 January, they took him at Investigation Branch of KDPO at noon. Police ordered him to sign on an already-prepared document without giving opportunity to read it. He rejected to sign on it. Then civil-dressed police laid him down on the floor and beat on his both soles. Then they compelled him to walk on wet floor for sometime and again laid him down and beat on his soles. They tortured him 150 to 200 times in this way. Then they again ordered to sign on the document. He rejected again. They beat him with nettle and asked to sign again. He rejected again. Then they took him before I. Pokharel. I. Pokharel began to beat him on different parts of body.

On 3 and 4 January I. Pokharel kicked and beat him randomly. On 5 January they handcuffed him and took at Legal Section, Police Headquarters, Naksal. The Legal Section rejected to keep him there. Then they took him to Quarter Guard, Armed Police Battalion No. 1, at Naksal. The police working there opposed vehemently. Then they took him at his office, Maharajganj the same day and ordered not to go outside from the office without prior order.

On the other hand his wife Binda Kumari Bagale had filed *habeas corpus* petition in Appellate Court, on behalf of the victim on 3 January claiming her husband had been detained incommunicado. The Court ordered to present the victim in person with rejoinder within 24 hours on 4th January. DSP Gurung answered the Court that he was not detained, he was working his office and he has not committed any crime under the Police Act and Regulation. So he did not order to detain. In the same way, on behalf of KDPO, SP Rana, said that no complain had been

filed against the victim and so they had not detained him on 5 January. That was a sheer lie.

He approached to CVICT Nepal and CVICT referred him to medical professionals Doctor for his mental and physical check-up. Then he registered torture compensation case demanding compensation of NRs. 100,000.00 and to issue an order for departmental action against the perpetrators. Amongst the perpetrators DSP Gurung got summon of the Kathmandu District Court on 24 January 2003. Then he began to appease him, time and again, in order to take back the case. The victim refused to do so. Lastly, the DSP threatened him to discharge dishonorably in case he fails to take back the case against them. Again the victim refused to do so.

DSP Gurung sent him to Legal Section with a letter [Ref. Pra/11/(059-60) Cha. no. 383] of on 5 February. 2003. Then he was detained for 3 days in Quarter Guard room of Armed Police Battalion no. 1, Naksal. The Inspector General of Police asked Bagale to reply (within 24 hours) him why he should not be terminated under the Regulation no.88 (a) and (e)? It was categorically written on the letter that he was involved in the gold case of DSP Gurung. Here the point to keep in mind is that DSP Gurung himself had answered to the Appellate Court that the victim had not breached both the Police Act and Police Regulation on 5 December. Another important point to be born in mind is that the victim had tried to complain with the IGP to take action against the perpetrators. But the Secretariat rejected to register the application and he had sent the application by registered mail on 25 December, 2002. The IGP even did not enquire about his application. Instead of taking action against the perpetrators he sent the letter of charge for dishonorable termination from the service.

The victim replied within 24 hours and he also challenged the charge in the Appellate Court, Patan (Injunction Petition no. 694). He demanded to issue injunction order along with interlocutory order on 16 March 2003. The Appellate Court issued temporary interlocutory order on 25 February. and the Court continued the previous interlocutory order on 14 March. Similarly, the perpetrators filed their rejoinder in compensation case and the Kathmandu District Court fixed the date for hearing for the day after tomorrow (4 April).

On 1 April, the police authority asked him to withdraw the both cases. He again refused to withdraw those cases. Then they have prepared a letter of temporary transfer to send him to Dipayal (Far Western Region), where that sort of technical (Musical Band) post is not in existence. The Police Regulation, 1993 Rule no. 31 (5) has prohibited that no police personnel shall be deployed to work in *kaaj* (temporary transfer) except in special circumstances created. It was clear that there was no special circumstance. Now the police authority has been compelling him either to take back the cases from the courts or to go to Dipayal (far western region) or to tender his resignation. Till now, Mr. Bagale is in police service.

Case 7

Name of Victim : Mr. B. Soti, 28 Yrs.
Occupation : Assistant Sub-Inspector (ASI)
 Bajhang District, Chaudhari Village Development Committee, Ward No. 7
HR violator/s : Deputy Inspector General of Police Krishna Basnet, Superintendent of Police Krishna Bahadur Thapa, Deputy Superintendent of Police Bhupal Kumar Bhandari, Deputy Superintendent of Police Madhav Nepal and Inspector Harihar Shrestha of Nepal Police.

Summary of Case : The victim, Mr. B. Soti is an Assistant Sub-Inspector of Nepal Police. In September first week of 2002 he was working at his office(Mahendra Police Club) . A man called Ramesh Thapa came and met him at his office. Ramesh told that he was sent there by Inspector Krishna Prasad

Sharma alias K. P. Sharma (then he was working at the HQ Secretariat) to inform about a factory. He told to the victim that there was a factory in Kathmandu valley, which illegally melts various sorts of metal and also manufactures chemicals. But he had no knowledge of whereabouts of the factory.

The victim informed this to his senior Inspector Sudan Singh Basnet (hereinafter SSB). Then SSB informed this to Senior Superintendent of Police (SSP) Basanta Raj Kunwar (Chief of Regional Police Unit Office, Bagmati (RPUOB) at the same day. SSP called both of them at his office room and ask about the information. Then he told that the information should be given to KDPO.

On 19 September 2002, Ramesh contacted the victim by cell phone at his office and told that two informant were ready to show the factory that day. He told SSP Kuwar about the information given by Ramesh. Then SSP Kunwar ordered him to contact to Inspector Kuber Singh. Rana immediately. He did the same. And Ins. Rana ordered him to go to KDPO. He went there.

Along with other police officers, the victim also went to search the factory. When they reached the factory workers began to flee by taking bags. Inspector Rana ordered him to catch the workers. He followed one of them and seized the bag but could not hold the man. He contacted SSP Kunwar and SP Hamal from the spot by the cell phone of Ramesh. Both of them ordered him to hand over the seized bag to DSP Purna Chandra Joshi. He handed over the seized bag to DSP Joshi at KDPO in accordance with the order of SSP Kunwar and SP Hamal and he returned back to his office. This was the development of 19 September.

Then, up to 16 December 2002 no one enquired him about the incident. He was working at his office. On 16 December DSP Madhav Nepal ordered him to go to HQ along with Inspector Harihar Shreshtha and Assistant Sub-inspector Ramesh Rana. Ins. Shreshtha led him to the room of Deputy Inspector General Krishna Basnet (DIG). Ins. Shreshtha entered into the room of DIG keeping him and Ramesh Rana outside. After 15 minutes he came out and ordered him to go inside the room. After his entrance, the DIG told SSP Krishna Bahadur Thapa to start to talk and he went out. SSP Krishna Bahadur Thapa asked about the incident of 19 September. He told every detail about the incident before him. Then he also went out keeping the victim alone in the room. After 3 hours both the DIG and SSP came in. DIG asked him to accept the whole charge of looting of gold for the sake of prestige of police force. If the victim would do so, he would be reappointed soon in the same post, the DIG tried to coax him. The victim rejected outright and requested that if there is any wrong the wrongdoer should be punished. If they found any wrong with him he would be ready to get punished. Then he ordered to go stay outside. After 15 minutes the DIG ordered his PA to send him into his room. He went there. The DIG warned him there is little time left. Otherwise, he will be tortured. He did not accept the DIG's offer. Then the DIG began to abuse him verbally. He asked whether he had gone by himself or sent to loot. He rejected the both statement. He told he was neither sent nor had been there to loot. DSP Bhupal Kumar Bhandari (of Legal Section) kicked him saying that was not the manner to speak to DIG.

DIG ordered him to put off his sweater, shirt and vest and sit down on the floor. He did the same. The DIG again forced to tell whether he was sent or gone to loot. He rejected again. Then he ordered to come closer to him and slapped him on his both cheeks and ordered him to put under the Quarter Guard Room (QGR).

The police searched his body and pockets and took away money and other things. On the verge of closing the QGR the victim requested to bring biscuit by his money. He requested that he had not eaten anything that day except a cup of

tea early in the morning. But the guard of the QGR told to him he was ordered not to provide not only foods but also water for 3 days.

The space of the QGR was hardly 5'x6' having a small bedstead without bed. It has a small ventilator and a grilled gate. The victim again asked for quilt because during that period weather goes down to - 2°. He got the same answer that it was ordered not to provide.

Next day, about noon police personal brought him before the DIG. There were DIG, SSP Thapa and DSP Bhandari. The DIG asked him to accept what he had told him the day before. The DIG abused him with vulgar words and blamed him he was trying to get acquitted by shedding tears. Then he was sent back to the QGR. At 7:30 pm he was again brought back to the DIG's room. The DIG, SSP and DSP were there. Then the DIG asked him to tell about the incident of 19 September. He told again the same thing. The SSP appeased him by saying the ASI has no role because he had been there with Ins. Basanta Rana. Again and again they ordered to tell about the incident to harass him. Then they lured him that if he signed on statement prepared by DSP Bhupal Kumar Bhandari he would not sent back to the QGR, instead he would be sent to barrack of No. 1 "Gana" battalion. The DIG said that the DSP had written the statement as said by the victim. But the day before, when they were enquiring all of them had neither pen nor paper. So the statement was not written in accordance with his consent. The DSP produced already prepared statement with pen and stamp pad and ordered to sign on the paper. The victim requested to the DSP either to give opportunity to read the paper or to read it out by the DSP. Instead of allowing him to do so the DIG ordered the police (staying outside the room in civil dress) to torture the victim and the DIG and SSP went out.

Three police personnel entered the QGR with rope, a bamboo stick and 3-4 feet long black polythene pipe. They tied his hand with the rope and put the tied hands under the knees. They put the bamboo stick between the tied hand and behind the knees and lay down on the floor and beat with the polythene pipe on his sole. After beating some time, they untied him and told to walk. They repeated this again and again. Up to 5 times he did not loose his sense then he lost the sense and did not know what did they do? When he got back his sense he was untied. Then he afraid of and signed wherever, whatever they ordered. While he was signing on the papers the DIG ordered to sign in English Language (to sign in English Language is not necessary by extant Nepali law) to make the statement strong. He did as ordered.

Next day, a Sub-Inspector came at QGR and told to the guard to supply food for him. From that day onward, food and water (even if inadequate) was supplied to him and a thin rug was provided for bedding.

After 3 days he was taken to the room of SSP Krishna Bahadur Thapa. He was asked to tell about the incident again. He followed the command.

On the very next day, he was taken to the same room. SSP Thapa told him to sign another paper. He gave reason that previously signed paper was clear. Then the victim asked to meet Inspector General of Police before signing the paper. Then he threatened to torture if he did not sign wherever he ordered. He verbally abused him. So, he signed as they wished. Then he was sent back to the QGR.

They have compelled him to sign on a two-paged paper on a Saturday. To shave, brush teeth, take bath, change clothes, inform to family members was totally prohibited. Once his wife went to meet him but she was not allowed to enter from the gate of HQ compound.

A letter, signed by DIG Devendra Bahadur Malla, was given to him to clarify the incident on 18 February 2003. He was to clarify within twenty-Four hours but the

clarification (answer) of the letter was signed before giving him the letter. In the letter, among the other things, it is said that his hand was burnt by acid in the incident and he was hospitalized. This was totally fake to terminate his job and make scapegoat because his hand was not burnt and he was not hospitalized. Then undated letter, signed by DSP Bhupal Kumar Bhandari, was given to him to be presented at Administration Department, HQ.

He had filed a case, with support of CVICT Nepal (Registration no 587 and Date 26 March, 2003) of torture compensation against the above-mentioned perpetrators in the Kathmandu District Court claiming Rs. 100,000.00 for torture compensation and demanded those perpetrators be punished. Still the case is in *sub judice* in Kathmandu District Court.

Case 8

- Name of Victim** : Mr. Santosh Kumar Chapagain
Kathmandu Municipality, Ghattekulo, Kathmandu
- Occupation** : Farmer
- HR violators** : Mr. Jagadish Pokhrel, Police Inspector (PI) and other police personnel
- Summary of Case** : Mr. Chapagain was asked to go to Gyaneshwor by Ms. Pushpa Ojha on 3 January 2003 Mr. Chapagain went to her then Ms. Ojha asked her about whereabouts of Mr. Deependra. Mr. Chapagain told her that he did not know Mr. Deependra therefore there is no question of asking his whereabouts to him. Then Ms. Ojha asked police to arrest Mr. Chapagain. Mr. Chapagain was taken to ward police office and was beaten with stick, boot, hand by Police Inspector and others. Two policepersonnel (name unknown) began to roll bamboo sticks over his both thighs. He was not provided water to drink and was made him sleep on the cold cement floor. Mr. Chapagain's brother knew about the incident and went to ward police office and they released Mr. Chapagain on the guarantee of his brother.
- Action Taken** : On 3 February 2003 Mr. Chapagain on the help of CVICT, Nepal, filed torture compensation case in the Kathmandu District Court demanding torture compensation Nrs. 100,000.00 and health expenses and departmental action to the perpetrators. The Kathmandu District Court decided the compensation case on 31 August 2004 awarding Rs 1636.00 to the torture victim as compensation. Likewise the court recommended for departmental action to the perpetrator Inspector Jagadish Pokhrel.

Case 9

- Name of Victim** : Mr. B, 20 (Male) (Name has been changed on the request of victim)
Kavrepalanchok.
- Occupation** : Student (ISc. 1st Year)
- HR Violators** : Personnel of security forces
- Summary of Case** : He was arrested by security forces personnel at 7.00 A.M. on 25 November 2003 from his resident at Tebahal, Kathmandu. He was arrested without warrant and the reason. He was driven away in a Tata Mobile (van) blindfolded. Security personnel took him to Band Gulma Singha Durbar and started asking questions about his involvement with Maoist insurgency and other information about Maoists. He denied any kind of relation and involvement with Maoists. More than 20 persons were put in one room but he could not identify them as they were not allowed to speak each other and were blindfolded. Then security personnel started verbally abusing and beating him with boots, stick, pipe and hand in his head, face, thigh, feet and other parts of the body.

Security personnel tied his hands with rope and wire and hanged him in a bamboo and beat on his head, face, feet and other parts of body. Such torture resulted in unconscious. When he became conscious he found dressed by doctor on his head injury.

He was not told the reason of his arrest and his family was also unknown about his whereabouts. When his health was in serious condition, they took him to army hospital blindfolded. As doctors denied treating him in blindfolded condition, they opened his eyes and hospitalized him for 10 days.

They prepared papers that he was arrested only on 19 May, 2004 and shifted him to Bhadra Bandi Griha (jail in Kathmandu) on 2 July 2004. He was released on 16 August 2004.

Action Taken : After his arrest his family members filed application to ICRC, Ministry of Home affairs, Human Rights Cell, Nepal Army.

Issues Raised by This Case:

- When the victim was disappeared by security forces, his family members could not file *habeas corpus* petition due to the fear of his life. There was chance of his extra judicial killing by security force.
- According to Section 9 of Human Rights Commission Act and Rule 3(1) of Human Rights Commission (Complain and Compensation Determination) Regulation torture victim can file an application seeking compensation at NHRC. The victim and his family members could not be ready to do so due to the fear of rearrest and revitalization by security forces.
- Likewise, according to Sections 3, 4, 5, 6 and 8 of Torture Compensation Act torture victim can file a case to the District Court for torture compensation. Victim and his family do not want to approach the Court for compensation because of the fear of rearrest and revictimisation.

Case 10

Name of Victim : Mr. A, 22 (Male) (Name is not disclosed on the request of victim) Kavrepalanchok.
Occupation : Taxi Driver
HR Violators : Personnel of Security Forces
Summary of Case : He was arrested by security forces personnel at 6.30 P.M. on 19 August 2004 from Old Baneshwor, Kathmandu without arrest warrant and the reason of his arrest. He was driven away into a taxi and blindfolded.. Security personnel took him to Singh Nath Gana (Army Barrack), Bhaktapur and started asking questions about his involvement with Maoist insurgent group and other information about Maoist. Army charged him of being of an informant of Maoists, He denied any kind of relation and involvement with Maoists. Then they started verbally abusing and beating him with boots, stick, pipe and boxing in his body randomly. They denied him to contact his family and relatives. Basically four Army personnel were involved to torture him. They pour water in his nose for torture. They usually tortured him in between at 8 PM to 12 PM.

Security forces allowed his brother to meet him only on 22 August 2004. Victim requested army personnel for his treatment but was denied doing so. On 23 Aug army personnel prepared a document and asked him to sign and released. Then they ordered him to be back go Army Barrack again on 25 August. He went there on the date and they again asked him to come Army Barrack on 7 September 2004. Now he has complains of

pain in ears, chest and both arms and there is restricted movement of left forearm which is on crepe bandage.

Issues Raised by This Case:

- When the victim was disappeared by security forces, his relatives could not file *habeas corpus* petition due to the fear of his life. There was chance of his extra judicial killing by security force in case of his disappearance case challenged.
- According to Section 9 of Human Rights Commission Act and Rule 3(1) of Human Rights Commission (Complain and Compensation Determination) Regulation, torture victim can file an application seeking compensation but the victim and his relatives could not file application for compensation because of the fear of rearrest and revictimisation by security forces.
- Likewise, according to Sections 3, 4, 5, 6 and 8 of Torture Compensation Act, torture victim can file a case to the District Court for torture compensation. Victim and his family do not want to go to Court for compensation because of the fear of rearrest and revictimisation.

In this way generally torture victims are not ready to move to Court for any kind of legal remedy due to the fear of revictimisation by security personnel which has contributed to the culture of impunity causing of continuation of human rights violations in Nepal.

