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Briefing for the United Nations Committee against Torture

Amnesty International welcomes Nepal's latest report to the United Nations (UN) Committee against Torture (the Committee).¹ The report, which is intended to serve as the second, third, and fourth periodic report to the Committee, represents a necessary step by the Government of Nepal toward addressing its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). It is hoped that the report will be followed swiftly by concrete measures, including legal and institutional reform, to bring an end to the widespread and systematic use of torture in Nepal.

Nepal's report to the Committee acknowledges that "despite the constitutional guarantee, legal provisions, administrative measures and judicial remedies, cases of torture are still reported in Nepal,"² but fails to assess accurately the scale of the problem or to admit the prevailing culture of impunity in the country. The government repeatedly cites the text of Article 14 of Nepal's Constitution as evidence of its commitment to upholding various provisions of the Convention against Torture. Article 14 (4) of Nepal's Constitution states that "No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment." However, there is an unconscionable gap between legal, including constitutional, obligations and actual practice in Nepal.

The following briefing summarizes Amnesty International's key concerns about the continued use of torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) in Nepal.

Current situation regarding torture and impunity

Over the past decade, there has been mounting evidence of human rights abuses committed by both sides in the internal armed conflict between the security forces and the Communist Party of Nepal (CPN) (Maoist), which declared a "People's War" in February 1996. Amnesty International has received reports of hundreds of "disappearances", thousands of arbitrary arrests, the widespread use of torture and other ill-treatment, including incidents of rape by Nepal's security forces. The CPN (Maoist) have been responsible for killings, abductions, torture and cruel treatment,³ the use of children in military activities, indiscriminate

¹ UN Doc. CAT/C/33/Add.6, 14 January 2005

² *Ibid.*, para. 53.

³ These acts, when inflicted on "[P]ersons taking no active part in the hostilities", are prohibited for all parties to a non-international armed conflict (and all individual

attacks, and attacks on civilians, among other abuses. At the heart of the problem is the environment of impunity within which the security forces and the CPN (Maoist) operate. Despite high profile pledges of commitment to human rights, both the Nepali government and the CPN (Maoist) leadership have failed to investigate human rights abuses or take appropriate action against those responsible.

The already critical human rights situation deteriorated further following the seizure of direct power by King Gyanendra of Nepal on 1 February 2005. The king's takeover further constricted the shrinking political space in Nepal and heightened the level of militarization, with the security forces exercising virtually unchecked power. For the first three months, the king imposed a State of Emergency, under which a number of fundamental rights—including the right to privacy and freedom of expression, press, assembly, movement and association—were suspended. Although the State of Emergency was lifted on 29 April 2005, basic civil and political rights remain restricted.

Despite Nepal's ratification of the Convention against Torture and the explicit prohibition of torture and other ill-treatment in Nepal's 1990 Constitution, both are still widely used by the security forces in order to extract confessions, obtain intelligence, or inflict punishment, among other things. The UN Special Rapporteur on torture, Prof. Manfred Nowak, at the conclusion of his recent visit to Nepal from 10 to 16 September 2005, stated that he had received "repeated and disturbingly frank admissions by senior police and military officials that torture was acceptable in some instances, and was indeed systematically practiced."⁴ This is consistent with Amnesty International's own experience. From interviews with former and present detainees and military officers, it is clear that torture and ill-treatment are routinely used, particularly in the first days after arrest, in order to extract confessions and information. One military commander told Amnesty International that those interrogating prisoners are permitted to use three slaps against them: "after one slap they say nothing, after two slaps they don't speak, but after the third slap they start to talk."⁵

Victims of torture and other ill-treatment come from a wide variety of backgrounds – including criminal suspects, people arrested in land disputes or over other private issues, and members of marginalized communities, including *dalits*. The largest group of victims are those suspected of (CPN) Maoist activity.

Most cases of torture and other ill-treatment reported to Amnesty International come from Kathmandu and the central districts, where the government is in control. It is likely that torture and other ill-treatment are equally, if not more, common outside Kathmandu—where international monitoring is more difficult.

Among the most common methods of torture used are: *falanga* (beatings on the soles of the feet with bamboo sticks, iron or PVC pipes); *belana* (rolling a

belonging to such parties) under Article 3 common to the four Geneva Conventions of 1949; customary international law and international criminal law.

⁴ United Nations Press Release, "Special Rapporteur on Torture says Practice of torture is systematic in Nepal", 16 September 2005, <http://www.unhchr.ch/hurricane/hurricane.nsf/0/747EA6831C54890AC125707E00508573?opendocument>.

⁵ Amnesty International report, "Nepal: Fractured country, shattered lives" (AI Index: ASA 31/063/2005, 3 August 2005), <http://web.amnesty.org/library/Index/ENGASA310632005?open&of=ENG-NPL>

weighted bamboo stick or other round object along the prisoner's thighs, resulting in muscle damage); *telephono* (simultaneous boxing on the ears), electric shock, mock executions and beatings with *sisnu* (a nettle-type plant which causes painful swelling of the skin). The latter method of torture is often inflicted on women, including on their breasts and genitalia. Amnesty International also has received information about rape and attempted rape in custody, but suspects that such crimes are under-reported due to the prevailing cultural and religious context.

Violations of specific provisions of the Convention

Articles 1 & 4

Under current Nepali law, there are no provisions to make torture a specific criminal offence, as required by Article 4 of the Convention. The only legal remedy available for victims of torture is Nepal's Torture Compensation Act (TCA) of 1996, which fails to criminalise torture and defines it in narrower terms than those of the Convention against Torture. The Act must be amended to comply with Nepal's treaty obligations.

Article 2 (a) of the TCA defines torture as follows:

"Torture" means physical or mental torture inflicted on a person who is in custody in the course of investigation or for trial or for any other reasons and this term also includes cruel, inhuman or degrading treatment given to such a person.

The law also fails to stipulate any penal provision under which alleged perpetrators of torture can be brought to justice or specify criminal punishments that can be imposed on the perpetrators as required in the Convention. It merely gives judges the power to direct the concerned authority to take *disciplinary* action against the officers involved without even putting a burden upon the government department concerned to report back to the court or any other authority on the action taken.

Article 2

Reports that torture remains widespread in Nepal indicate that the government plainly has failed to take effective measures to end torture and other ill-treatment by the security forces. As long as the security forces are permitted to commit torture and other human rights violations with impunity, no amount of legislative reform will improve the situation. The laws in Nepal must be enforced.

As noted in the government's report to the Committee, Nepal's 1990 Constitution contains a number of safeguards against arbitrary arrest and detention. Nepal also is a State party to six of the main human rights instruments, including the Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR), and has ratified the four Geneva Conventions of 1949. In its report, the government points to its obligations under the Nepal Treaty Act of 1991, stating that "if any domestic law is found to be inconsistent with a convention to which Nepal is a State party, the convention prevails". The report

further cites the importance of the TCA of 1996 (referred to by the government in its report as the Compensation Relating to Torture Act (CRT), but generally known as the TCA) and the Human Rights Commission Act of 1997.⁶

Despite this generally positive legal framework, it is significant that torture is not defined in Nepali law as a criminal offence. In 2001, the government drafted a new Criminal Code that reportedly provides for a maximum punishment of three years' imprisonment or a fine or both for any person in public authority found to have been responsible for torture. Amnesty International is concerned that the penalties provided for may not satisfy the terms of Article 4(2) of the Convention, as they do not appear to take into account the grave nature of the offence.

The draft Code also reportedly provides for a time limit of three months to lodge a complaint of torture. The organisation is concerned about the time limit for filing complaints set out in this draft Code. The Committee has stated unequivocally that "[N]o statute of limitations should apply to torture or any other international crime."⁷

Meanwhile, constitutional protections have been subverted by special legislation that lacks adequate safeguards, especially the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) (2004) and the Public Security Act (PSA) (1989). Both allow detainees to be held in preventive detention for long periods without being brought before a judicial authority, increasing the risk of torture, ill-treatment and "disappearance".

The PSA allows for preventive detention for 90 days on orders of Chief District Officers. It can be extended for six months with further endorsement from the Home Ministry and another six months subject to the approval of an Advisory Board, the existence and functions of which are unclear.

TADO was first promulgated in November 2001 as a Royal Ordinance, then passed as an Act of Parliament for a limited period. Now it continues to be reissued routinely as an Ordinance. Under TADO, the Royal Nepalese Army (RNA), the Armed Police Force, and the Nepal Police all have the power to make arrests without a warrant. The current TADO allows for preventive detention for up to six months, in any place "suitable for human beings", without the detainee being presented before a court. An extension for a further six months is possible with the consent of the Home Ministry.

Amnesty International believes that the PSA and TADO contravene Nepal's Constitution and international law and standards and should be revised or repealed. The latter provide, *inter alia*, that all detainees must be arrested and held by a body (such as the police) empowered by law to do so, in recognised places of detention, be given prompt access to their families, a lawyer and a doctor, be brought promptly before a judge and be able to challenge the legality of detention, and be promptly charged and prosecuted or else released. Records of all detentions and transfers must be made publicly available. All the above are necessary safeguards against torture and other ill-treatment.

In a statement issued on 17 August 2005, the Office of the High Commissioner for Human Rights (OHCHR) urged the government to transfer promptly all detainees out of RNA custody, reminding the authorities of a public pledge issued in March

⁶ See for instance paras. 13 and 14 of Nepal's report.

⁷ UN Doc. A/59/44 (2003-4), para. 213(h).

2004 – “His Majesty's Government's commitment on the implementation of Human Rights and International Humanitarian Law” – which stated that “any detainee shall be held in an officially recognized place of detention.”⁸

Most of the torture cases documented by Amnesty International have occurred during detention in army barracks. Even prosecutions involving the worst abuses, such as torture resulting in death, have resulted in only minor penalties for the

On 27 September 2005, a court martial found three officers of the RNA guilty of failing to follow post-mortem and other procedures following the torture and death in custody of a child, Maina Sunuwar, aged 15, who had been abducted from her home by security forces and held in incommunicado detention. The court martial sentenced the men — Colonel Bobby Khatri, Captain Sunil Adhikari, and Captain Amit Pun — to six months in jail and temporary suspension of promotion. However the officers were considered to have already served this sentence by being confined barracks while awaiting trial so are unlikely to serve any time in prison.

Security forces personnel in plainclothes arrived at Maina Sunuwar's home in Kharelthok Village Development Committee (VDC), Kavre district, just southeast of Kathmandu, at around 6am on the morning of 17 February 2004. They asked for Maina's mother, Devi Sunuwar, who had been a witness to an extrajudicial execution by security forces several days earlier. As Devi Sunuwar was not at home, the security forces took Maina with them, telling her father to bring his wife to the Shanti Gate army barracks, in nearby Dhulikhel, the next day.

Devi Sunuwar and her husband went to the Shanti Gate army barracks the following day, as instructed, accompanied by a group of some 28 people from their village, including the VDC chairman. However, officers at the barracks denied any knowledge of Maina Sunuwar's whereabouts, telling the family that no one was detained at Shanti Gate.

After Maina's “disappearance”, her family visited other army barracks and police offices in the area, appealed to local and regional government officials, and registered the case with Nepal's National Human Rights Commission.

On 21 April 2004, a Nepali weekly published a letter attributed to anonymous soldiers, stating that Maina had been tortured, including by electric shocks applied to her breasts, and killed. In response to inquiries from embassies and international organisations based in Kathmandu, the RNA replied that Maina was killed while trying to escape custody. However, no official confirmation of her death was provided to her family.

security forces involved.

Nepal's legal institutions have been weakened severely by the non-compliance, and even outright defiance, of the security forces charged with responsibility for maintaining law and order. The security forces have shown consistent disregard for the rule of law and the authority and independence of the judiciary. This is most apparent in the number of recent cases in which detainees freed on court orders have been immediately rearrested, often directly in front of the court house. In many cases, those rearrested have been subjected to torture or other ill-treatment. Even when the security forces have blatantly ignored orders of the Supreme Court, there are generally no consequences. Judges appear reluctant to issue contempt of court orders to security forces personnel, or to consider any other legal sanction.

⁸ UN OHCHR in Nepal Press Release, 17 August 2005, <http://www.un.org.np/index.php>

On 19 September 2005, 11 detainees were rearrested immediately after being released before the Kanchanpur District Court in the town of Mahendranagar, Kanchanpur district, in western Nepal. This was the third time security forces rearrested the group, despite repeated court orders for their release. Their whereabouts were unconfirmed and they were considered to be at risk of torture or ill-treatment.

The 11 men - Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhama - were first taken into custody on 17 August 2004, while attending a mass meeting held by the CPN (Maoist) in Kanchanpur district. The security forces broke up the meeting, arresting any participants who did not flee. The detainees, all from Jogbudha Village Development Committee in neighbouring Dadeldhura district, claim they were forced by the CPN (Maoist) to attend the meeting, and did not flee as they were not guilty of any crime.

The 11 men were initially held in incommunicado detention at the Surya Dal army barracks in Bhagatpur, Kanchanpur district, and transferred to Kanchanpur prison in November 2004. In May 2005, representatives of Amnesty International (AI) visited several of the detainees at Kanchanpur prison. AI found that Birman Sarki had severe mental disabilities, apparently as a result of torture and ill-treatment during his earlier detention at the Surya Dal army barracks. He was hardly able to speak, and the scar of a serious head wound was visible. The other detainees told AI that Birman Sarki had been savagely beaten by soldiers at the barracks after expressing concerns about the safety of his wife and young children.

The Kanchanpur Appeal Court twice ordered the release of the detainees on the grounds that the government had not provided sufficient evidence to justify their preventive detention, even under the broad terms of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO).

On 16 September, the Supreme Court ruled that the group's detention was illegal and ordered their release in the presence of the Kanchanpur District Court. On 19 September, police brought the detainees to the court house in three vehicles escorted by about 35 security forces personnel, waited while their release was recorded by the district court registrar, and then ordered the group to get back into the vehicles. The detainees were driven in the direction of the Kanchanpur Regional Police Office, where it is thought that they may have been detained.

Two others arrested with the group in August 2004 — Sita Negi and Karna Bahadur Dhama — were transferred in February 2005 to Jaiarkot prison, in the mid-western

Nepal's already weakened judiciary has come under more intense political pressure in 2005, which poses a serious threat to its independence. New "Justice Sector Coordination Committees" were established earlier this year to bring judges together with police, lawyers and civil society – apparently to improve the administration of justice. However, in such a heavily politicised and militarised environment there is real concern that such committees will provide an opportunity for the security forces and government authorities to exert pressure on judges.

In a speech delivered on 20 September 2005, Tulsi Giri, Vice Chairman of the king's Council of Ministers, delivered the most succinct statement to date about

the regime's attitude toward the rule of law in Nepal. "We are fighting anarchy and we have to move ahead by circumventing constitutional provisions," he said.⁹

The government in its report highlights the important role of the National Human Rights Commission (NHRC), which was established in 2000. The NHRC indeed has a vital role in investigating human rights violations, identifying those responsible and providing recommendations to prevent torture. The Act establishing the NHRC gives it wide investigative powers similar to a court in investigating functions.

However, the NHRC has faced serious obstruction by the government and security forces in the last few years. In violation of its mandate, NHRC staff and commissioners have been repeatedly prevented from visiting detainees. Following the King's seizure of power in February 2005 some NHRC commissioners were also prevented from travelling outside Kathmandu to carry out their duties. The government and security forces have also consistently refused to engage with the NHRC or implement its recommendations.

On 27 May 2005, after a change in the NHRC's statutory appointment procedure, introduced by Royal Ordinance, new Commissioners were appointed to fill all four posts. While the Chairman of the NHRC was reappointed for a further five-year term, the composition of the NHRC has been radically altered. There were grave concerns that the process used for these appointments were not in accordance with the Paris Principles and have jeopardized the independence and credibility of the NHRC.

Under increasing criticism for its human rights record, the Nepal government did set up several bodies with a mandate to protect and promote human rights, however these measures have been largely cosmetic. Human Rights Cells were created in the Home Ministry, the RNA (July 2002), police (January 2003) and APF (January 2003).

An examination of the information provided by the authorities regarding investigations carried out and actions taken by these cells, suggests that they have so far been largely ineffective. Based on information provided to Amnesty International by the Inspector General of Police, the organization found that out of over 1,500 complaints received by the Human Rights Cell, the police had taken some level of disciplinary action in only 18 cases. In a mere two cases, each concerning rape (one of a minor), criminal prosecutions were pending.

Similarly, information provided by the RNA revealed a disturbing pattern of punishments imposed by courts martial on members of the RNA accused of serious crimes, including torture and other ill-treatment, which may not accord with Nepal's obligations under Article 4(2). In many cases dismissal, demotion, forfeiture of promotion and granting of compensation appeared to be the only action taken against perpetrators of grave violations of international human rights and humanitarian law, such as violence resulting in the death of a detainee.

A Human Rights Promotion Centre was set up in November 2003 under the Prime Minister and Council of Ministers' Office; but there is little evidence of any effective intervention on torture and other human rights violations by this Centre. Nepal's report to the Committee states that the Centre is responsible for

⁹ "Tulsi Giri speaks out", translation by the weekly *Nepali Times*, #266, 23-29 September 2005, http://www.nepalitimes.com/issue266/guest_column.htm

informing the public about work carried out by the government regarding human rights and “for maintaining coordination between various entities, including the NHRC, in connection with the responsibilities to be borne as per international human rights instruments to which Nepal is a party.”¹⁰ The Centre is also to run special programmes on the effective protection and promotion of human rights through contact and coordination with international agencies and organizations. Amnesty International has no information about any significant efforts by the Centre to carry out these duties.

A High-Level Human Rights Protection Committee was set up by the government on 17 March 2005. Its functions were stated to include providing support for the effective implementation of the recommendations of the NHRC, providing additional support to the Human Rights Promotion Centre and playing a coordinating and supportive role in the field of protection and promotion of human rights. The Committee is chaired by the Attorney General and the secretaries of the ministries of Home, Defence, Foreign Affairs, Law and Parliamentary Affairs, Women Children and Social Welfare, Local Development, and Education and Sports are members of the committee. According to a report in *Nepal Samacharpatra* of 8 May 2005, the Committee had only met once.

Article 10

Nepal’s security forces have received substantial support and training on human rights and international humanitarian law from donor countries and international and local human rights organisations. However, Amnesty International is not aware of any credible assessment of the efficacy of such training. While Amnesty International welcomes efforts to provide such training, the continuing pattern of human rights violations committed with impunity for perpetrators among the security forces suggests that there has been little impact so far.

There have been recent worrying reports that the overall length of training for RNA officers is being reduced from three years to ten months, and for new recruits from nine to six months, due to pressure to deploy.

Articles 12 & 13

The government of Nepal has failed to ensure that prompt and impartial investigations are carried out wherever there are reasonable grounds to believe that an act of torture has been committed. At present, the only legal recourse available for a torture victim is the TCA, which provides for victims of torture or their relatives to be able to apply for compensation at the local district courts. However, by merely providing for small amounts of compensation rather than investigation and prosecution of alleged torturers, this law gives the security forces a sense of impunity rather than of being under scrutiny and accountable. Victims and their families face great risks by pursuing compensation, and are rarely rewarded for their trouble.

TCA cases are not initiated by the State. The burden rests entirely upon the victims and their relatives to pursue redress. Victims and their relatives must engage private lawyers for TCA cases. By contrast, members of the security forces accused of committing violations can be represented by the Attorney General’s department, on the request of their officer-in-charge.

¹⁰ UN Doc. CAT/C/33/Add.6, paras. 31-33

As indicated above, the TCA does not define torture as a crime. The TCA gives district judges the power to direct disciplinary action against the perpetrators, but does not have any provision for the government department concerned to report to the court or other relevant authority. This legislation does not give judges the authority to recommend criminal prosecution for torture and other ill-treatment.

Amnesty International believes that the prevalence of torture and other ill-treatment in Nepal is not reflected in the relatively small number of cases that are reported and pursued through the courts. This is because—in addition to the serious problems posed by expensive legal fees and interminable delays in the judicial process—torture victims, their families, and their lawyers all face the threat of reprisals in the course of making a complaint. Some victims have been rearrested, and subjected to further torture and ill-treatment after seeking compensation. Witnesses and lawyers working with the victims also have been threatened. Nepal does not have a witness protection program, and the State appears to take no responsibility for the safety of victims from further violations.

Farmer Keshav Thapa was re-arrested and held in incommunicado detention for one week in June 2005 after he went to the Bhaktapur district court to seek compensation for torture he had allegedly suffered at the hands of a guard at the Surya Binayak army barracks in Bhaktapur, a district neighbouring Kathmandu, during an earlier incident in April.

On 6 April 2005 he had been summoned to the Surya Binayak army barracks, and he went there with his wife. She was kept in the waiting room while he was taken for interrogation by a guard from the barracks who allegedly beat and kicked him in the face and body, and forced him to sign a document whose contents he did not know. (Amnesty International has recorded many instances of members of the police or army using torture techniques to obtain statements or confessions. Although statements made through the use of torture are legally inadmissible as evidence in court, in practice the courts assume all statements or confessions taken by the security forces to be valid). After five hours of abuse, he fainted and was handed over to his wife.

On 8 April, Keshav Thapa went to the Centre for Victims of Torture (CVICT), a Nepal-based organization, to receive treatment for his injuries. CVICT prepared a medical report detailing his injuries, which included severe bruising to his face and body. That day he also filed a report about what had happened to him with Nepal's National Human Rights Commission, and filed a writ petition challenging the legality of the document he had been forced to sign.

Keshav Thapa was abducted by members of the security forces on 13 June, after he went to the Bhaktapur district court to pursue his torture compensation claim. He was held in incommunicado detention at the Surya Binayak army barracks in Bhaktapur district for

The TCA provides that a detainee should be medically examined by a government doctor when being taken into custody and on release, or, if no doctor is available, by “the concerned authority”. This means that the police or army officers in charge of a prisoner should carry out the examination. It also requires that a copy of the report be sent to the relevant District Court. Amnesty International is concerned that none of this is being applied. Implementation of these provisions could prove effective both as a preventive measure and to aid prosecution efforts, by collecting evidence establishing that torture has taken place. It is also

necessary for the authorities to ensure that the treatment for victims of torture while in custody or afterwards is paid for by the state.

Article 14

Amnesty International is concerned that the TCA does not provide for sufficient compensation which takes into account the severe suffering of victims.

The number of cases filed under the TCA has been limited during the last few years. Fear of reprisals and little hope of justice are among the factors preventing people from filing complaints. Most cases filed under the TCA are against the police.

The grounds for rejecting cases under TCA have included that the alleged torture by police did not take place inside a police station. Such denials, which are unacceptable even if true, are made possible by the widespread practice of not providing warrants of arrests, not registering arrests and detention, and not granting institutions such as the International Committee of the Red Cross (ICRC) and NHRC access to detainees.

Once compensation has been awarded, the victim has to apply to the Chief District Officer (CDO) within 35 days. The CDO refers the application to the Home Ministry, from where a request to release the compensation is sent to the Finance Ministry, which sends the money to the CDO. Even in the small number of cases in which compensation has been awarded by the courts, the money has only rarely been actually paid out to the victim.

As recognized by the government in its report, the TCA should be amended to redress these shortcomings. In the absence of a Parliament, such amendment can only be passed by a Royal Ordinance.

Conclusion

Amnesty International considers that the prevailing culture of impunity contributes significantly to the ongoing and widespread torture and ill-treatment in Nepal. The organization has called the government to act urgently to ensure that members of the security forces abide by international human rights and humanitarian law, which prohibit torture and other ill-treatment in all circumstances. Amnesty International has urged that as a first step, senior government officials should make clear public statements that torture and other ill-treatment will not be tolerated, and that those responsible for committing such violations will be prosecuted. The organization also has recommended that the government should take concrete action to undertake independent and impartial investigations into all allegations of torture and other ill-treatment, and ensure that security personnel are held criminally accountable for human rights violations committed by them.

Amnesty International is concerned that Nepal's TCA, which provides the only legal remedy available for victims of torture, is not an effective measure to prevent torture. It does not define torture as a crime, provide for appropriate penalties that take into account the grave nature of the offence, nor provide for sufficient compensation which takes into account the severe suffering of victims.

As stressed by the UN Special Rapporteur on torture at the conclusion of his recent visit to Nepal, the emphasis on compensation to the victims as opposed to criminal sanctions against the perpetrator strengthens impunity. Even in the rare cases where compensation is awarded to the victims, it is rarely paid out. Amnesty International has recommended that the government take measures to guarantee the safety of victims of torture and other ill-treatment, as well as family members and lawyers—some of whom have suffered reprisals for making complaints.

Amnesty International also has called on the government to end immediately the practice of incommunicado detention, which may facilitate the use of torture and other ill-treatment, and can in itself constitute a form of such treatment, and safeguard the rights of detainees, including their constitutional right to be produced before a judicial authority within 24 hours of arrest. The Special Rapporteur on torture has similarly recommended that: "Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention."¹¹

Amnesty International has urged the RNA that, where its members must detain persons, they should hand over detainees to police custody within 24 hours of arrest, or within a reasonable time-frame if arrests take place in a remote location. Most of the torture cases documented by Amnesty International have occurred during detention in army barracks, which, according to the UN Working Group on Enforced or Involuntary Disappearances, "by any reasonable interpretation do not qualify as humane places of detention."¹² National and international monitors must have unhindered access to all detainees and all places of detention and interrogation without prior notice.

Amnesty International hopes that the government will respond positively to the concerns raised by the Committee against Torture and take action to end the use of torture in Nepal.

¹¹ UN Doc., E/CN.4/2003/68, para. 26. (e)

¹² UN Doc., E/CN.4/2005/65/Add.1, para. 49