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Excellency,

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture, I refer to the examination of the second periodic report of Nepal (CAT/C/33/Add.6) by this Committee at its 35th session, which was held on 7 to 25 November 2005 and where Conclusions and Recommendations (CAT/C/NPL/CO/2) were adopted and transmitted to your Permanent Mission.

In paragraph 38 of those Conclusions and Recommendations, the Committee asked, pursuant to its rules of procedures, that Nepal provide further information regarding areas of particular concern identified by the Committee in paragraphs 13, 14, 21 (b), (c), and (e), 25, 27, and 29 (see extracts annexed). Noting that a reply concerning the information sought by the Committee was provided on 1 June 2007, I am writing to express appreciation for your responses on these matters and the substantial information provided. In order to respond most effectively, I have discussed the recommendations in several clusters below.

The Committee would be grateful for clarification of the following matters, where sufficient information is not yet provided to enable it to complete an analysis of the progress made regarding implementation of aspects of the Convention:

State Efforts to Protect Against Torture

In paragraph 13, the Committee recommended the State party should publicly condemn the practice of torture and take effective measures to prevent acts of torture; as well as take all measures to protect all members of society from acts of torture. We appreciate learning about the preparation of the draft Torture Act, which has been referred to the Ministry of Law, Justice and Parliamentary Affairs. Please provide detailed information with regards to the current status of this draft act and when it is expected to be implemented. We would also appreciate receiving the current text of the draft Torture Act.

In addition, we would appreciate further details on the current status of the draft Criminal Code, mentioned in paragraph 7 of your response, and when it is expected to be implemented. We would also appreciate receiving the current text of the draft Criminal Code. Please also provide further information on how or whether these pieces of legislation will amend the definition of torture as it appears in article 2(a) of the Torture Compensation Act of 1996 would be appreciated.

H.E. Mr. Dinesh BHATTARAI
Ambassador and Permanent Representative
Mission Permanente du Royaume du Népal auprès de l'ONU et des organisations internationales à Genève
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The Committee would appreciate information on the steps taken by the State party to amend legislation to increase or remove the current statute of limitations for submitting complaints of torture. In addition, we would appreciate information on the steps taken to adopt legislation to protect victims of torture from reprisals and intimidation when they come forward to make complaints about their treatment.

We would also appreciate additional information about how allegations of torture committed by law enforcement personnel are reported and investigated, as well as the resulting penalties for such acts. Please provide detailed information on the cases mentioned in paragraph 8 of your response, in which security personnel were charged with torture, excessive force, and murder. Please include information regarding the nature of the offences, the charges, and types of convictions and penalties. Also, we would welcome any information on efforts made by the Government to ensure that past acts of torture by security personnel, particularly those prior to the instalment of the democratic government in 2006, will be fully investigated and addressed.

With reference to paragraph 25, the Committee recommended the establishment of an independent body to investigate torture and ill-treatment by law enforcement personnel. In your reply, you stated that the draft Torture Act has proposed to set up a separate entity to investigate the cases of torture. As mentioned earlier, we would appreciate any information on the status of the draft Act, as well as its text. Furthermore, the Committee requested information on the mandate, role, composition and jurisprudence of the special police courts, which we did not find addressed in your reply. Please provide this information.

In paragraph 27, the Committee recommended the State party should ensure that procedures are in place to monitor the behavior of law enforcement officials and to promptly investigate all allegations of torture and ill-treatment, including gender-based violence and abuse, with a view to prosecuting those responsible. We would appreciate further details on the Women's cells that you mention to deal with cases of violence against women. Additionally, details on the procedures in place to report and track the cases of violence against women by law enforcement officials would be welcome.

Please also provide additional information on the 11 cases in which Departmental action was taken against police officials who were found guilty of sexual harassment, including what penalties were given to the officials. We would also appreciate a list of any other reported cases of gender-based violence or abuse.

Detention

Regarding the recommendations in paragraph 14 about the practice of pretrial detention and the fundamental rights of persons deprived of liberty, the Committee notes with satisfaction the repeal of the Terrorist and Disruptive (Control and Punishment) Ordinance which failed to provide for fundamental guarantees of persons deprived of liberty. We would appreciate detailed information on whether there are still any people being held who were detained under that Act, and if so, the number of people still detained, the charges against them, and the scheduled dates for their hearings.

The Committee notes with satisfaction that the Interim Constitution has a mandatory provision that any detained person has to be presented before the competent judicial authority within 24 hours of arrest. However, you also mention that under Article 118 of the Civil Code, the accused remain in judicial custody for certain serious crimes or under exception circumstances. Please provide information on what the crimes and circumstances are that require this remedy, as well as statistics on how many people are being held under this article of the Civil Code and the length of time of their detentions.

Additionally, we would appreciate the number of people being held in pretrial detention generally. Please also provide information on the measures that Nepal is taking to ensure that detainees have the right habeas corpus, to inform a relative and access a lawyer or independent doctor.

Concerning the recommendations in paragraph 21 on the conditions of detainees, we would appreciate more information on the exact number and location of detention places and facilities, as well as documentation on how such facilities are designated.

We commend Nepal for arranging to maintain a systematic report of people under preventive detention with the Office of the Prime Minister and Council of Minister, as mentioned in paragraph 8 of your response. We would appreciate any information that has been collected under this newly organized reporting mechanism. Please clarify for the Committee whether this register will include all persons deprived of liberty, or just those under preventive detention. Please also provide information on whether this register will specifically designate the number of juveniles who are detained, as per our recommendations. In addition, we would appreciate further information on which persons or groups will have access to the information contained in the register.

We would also appreciate more information on the process of medical examinations for detainees. Specifically, please clarify whether the mandatory medical examination proposed in the draft Torture act provides that the exam must be performed by a medical doctor.

Juveniles

In regard to the protection of juveniles from breaches of the Convention, further details would be appreciated on the functioning of the juvenile bench that has been established. Any documentation on the procedure for ensuring that juveniles only appear before the juvenile bench, as well as statistics about how many cases have already been heard by the bench, would be greatly appreciated.

Compensation

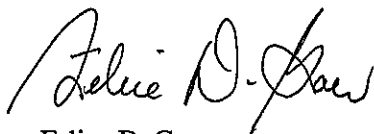
The Committee recommended in paragraph 29 that the State party should provide information on the total amount paid in compensation to victims of torture, and should ensure that compensation awarded by the courts is paid in a timely manner. We note with satisfaction that five victims of torture were compensated and an additional three are in the process of being compensated. Please provide information on when the final decision was issued by the judiciary in those cases and what was the total amount paid to those victims of torture?

Non-Refoulement

The Committee is satisfied to learn that at the time of the writing of the response, all persons having been deported from Nepal were sent back in accordance with established legal procedure as stated in paragraph 6 of the response. Please provide the Committee with information on the cases of Tibetan refugees currently residing in Nepal who have been arrested following recent protests, and whether any of these persons are facing deportation or expulsion from Nepal back to China.

Upon receipt of your reply with additional information as requested above, the Committee will be able to assess whether further action may be required. The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Nepal on the implementation of the Convention and, in this context, to receiving clarification to the enquiries in this letter.

Accept, Excellency, the assurances of my highest consideration.



Felice D. Gaer

Rapporteur for Follow-up on Conclusions and Recommendations
Committee against Torture