



Seeking Reparation for Torture Survivors



**REVIEW OF THE IMPLEMENTATION OF RECOMMENDATIONS
MADE BY THE COMMITTEE AGAINST TORTURE AFTER ITS EXAMINATION OF THE
SECOND PERIODIC REPORT OF NEPAL AT ITS 35TH SESSION IN 2005**

INTRODUCTION

This review is submitted to contribute to the Committee against Torture's survey of the implementation of recommendations made after its examination of the second periodic report of Nepal at its 35th Session in 2005.¹ We note that the Committee has identified as areas of particular concern, paragraphs 13, 14, 21(b), (c) and (e), 25, 27 and 29 of those recommendations. Annexed to this review are two recent reports: *Submission on the state of implementation of the Special Rapporteur on Torture's recommendations following his Mission to Nepal in 2005* by Advocacy Forum Nepal, The Redress Trust and the Association for the Prevention of Torture; and *Criminalise Torture*, which represents an attempt by a group of human rights organisations together with the National Human Rights Commission of Nepal to draft model legislation on torture. The sections of these reports dealing with the paragraphs highlighted by the Committee as of particular concern are indicated in a table. Below, Advocacy Forum Nepal (AF), the Association for the Prevention of Torture (APT) and the Redress Trust (REDRESS) draw out four cross-cutting themes, which they respectfully submit, require the Committee's urgent attention.

CRIMINALISATION OF TORTURE

Articles 26 and 33 (m) of the Interim Constitution of January 2007 require a law to criminalise torture to be enacted. In addition, in a verdict dated 17 December 2007 (*Rajendra Ghimire v. Council of Ministers et al*) the Supreme Court of Nepal ordered "the Government of Nepal to criminalize torture and make provisions to punish the perpetrators of torture as demanded by the petitioners". However, by the end of October 2009, no legislation criminalising torture has been put before parliament, let alone enacted.

The only legislation to redress torture is the Torture Compensation Act 1996 (TCA), which deals only with compensation and does not allow for criminal prosecution nor penalties proportionate to the gravity of torture. In the view of AF, APT and REDRESS, the TCA is not a satisfactory alternative to

¹ CAT, *Conclusions and Recommendations: Nepal*, UN Doc CAT/C/NPL/CO/2 (13 April 2007).

the enactment of specific legislation criminalising torture in Nepal. For example, the TCA does not contain a definition of torture in line with Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture) and does not provide for effective remedies. Moreover, torture victims have only a period of 35 days in which to file a complaint under the Act, which is the single most significant factor contributing to the denial of compensation to thousands of victims of torture in Nepal. Therefore, the inadequacy of the TCA has allowed the practice of torture to persist in Nepal as those responsible continue to be blanketed by a culture of impunity.

On 26 June 2009, at an event to mark UN International Day in Support of Victims of Torture, Home Minister Bhim Rawal committed to end impunity for human rights violations, stating: “[t]he culture of impunity should be ended if the people are to free themselves from being tortured”. However, at a meeting soon after with human rights activists, when asked to put legislation to criminalise torture before the Legislative-Parliament, the Minister stated that as there are so many other competing issues, this has not yet been agreed as a priority for all political parties and unless there is some consensus, it would be difficult to proceed.

Amid this lack of progress in criminalising torture and an apparent lack of commitment from government after government to do so, a ‘Coalition against Torture’ (see above) put together a draft bill to criminalise torture in order to assist the Legislative-Parliament to follow through on this obligation under Article 4 of the UN Convention against Torture, which Nepal acceded to on 14 May 1991. Amid the ongoing political uncertainty, it is unlikely that such a law will come into force any time soon.

IMPUNITY AND ACCOUTABILITY MECHANISMS

More than three years after the *Jana Andolan* (people’s movement) of April 2006 and despite repeated promises of greater respect for human rights and accountability, impunity for past and present violations remains firmly entrenched in Nepal.

As a result of political instability in the country, the Legislative-Parliament has been largely paralysed. Key legislation to put in place transitional justice mechanisms as well as initiate reform of the criminal justice system has not progressed. For example, we would note that there is no clear timeline for the passing of legislation to establish the *Independent Disappearances Commission* provided for in the Comprehensive Peace Agreement (CPA) of November 2006, and the powers it may have as currently set out in a draft law remain ambiguous. Having delayed the creation of the commission for nearly three years now, the Government is not upholding its duty to undertake

“prompt investigation and prosecution” of human rights violations as required under international human rights law. Similarly, legislation to establish a *Truth and Reconciliation Commission* provided for in the CPA has not been tabled and major concerns remain about an existing draft.

There have been no independent investigations into the allegations of systematic torture and disappearances during the armed conflict. As part of the CPA, reparations were supposed to be paid to victims of the conflict, including torture victims. In the absence of independent bodies to make recommendations for compensation and other forms of reparation to the victims, some *reparation initiatives* are underway without the involvement of transitional justice mechanisms, and decisions to award compensation are being made without proper policies. The tariff has been set by central government (i.e. the council of ministers) but individual decisions to award compensation are taken by local government representatives. For example, in late 2008 Chief District Officers started to register names of certain categories of conflict-victims or their relatives, in order to provide them with financial assistance. Torture victims were not included in these categories though some local government representatives informed torture victims that their names would be registered during a “later phase”. By the middle of July 2009, the Government had reportedly distributed a total of 1.34 billion rupees as emergency financial “relief” to around 26,000 conflict victims or their families.² The largest share has gone to the next-of-kin of those killed. However, this has been done in an *ad hoc* fashion, and “according to government officials, due to procedural factors not all families, especially of those killed or disappeared during the conflict, might have received the allotted money”.³

Many of the accountability mechanisms in place are ineffective. For example, the *National Human Rights Commission of Nepal* (NHRC) is mandated to investigate alleged violations of human rights. However, the NHRC’s recommendations to the Nepal Government are rarely implemented in practice, despite repeated calls from civil society and the NHRC itself. On 26 June 2009, the NHRC submitted a 10-point memorandum to the new prime minister drawing attention to the lack of implementation of NHRC recommendations by successive governments. On 12 August 2009, the NHRC stated that it was encouraged to hear that the prime minister had instructed the Home, Defense, and Peace and Reconstruction Ministries to provide information on the implementation of NHRC's recommendations and compensation provided. Though this is somewhat encouraging, it remains to be seen whether this results in all compensation payments recommended by the NHRC being awarded any time soon.

AF also regularly files complaints to the *Nepal Police Human Rights Unit*. However, the “investigations” conducted by the Human Rights Unit do not qualify as the prompt and thorough

² See *Kathmandu Post*, Vol. XVII No. 149. 16 July 2009 (01/04/2066).

³ *Id.*

investigations required under the Convention against Torture, rather they are limited to sending details of the complaint (provided by AF) to the relevant District Police Office and asking that Office to respond to the allegations. Moreover, we are not aware of any police officer having been suspended pending the outcome of Human Rights Unit “investigations”. The punishments that have been imposed as a result of investigations by the Human Rights Unit or otherwise bear no relationship to the gravity of the offences committed, being limited to departmental sanctions. In addition, the large majority of victims are too fearful to complain to the Human Rights Unit of the Police as they do not trust its independence and fear reprisals. This is representative of a wider issue – for example, the TCA does not provide for the protection of those filing cases from intimidation and/or reprisals. The Unit therefore needs to be thoroughly reformed and an independent Police Commission needs to be set up with wide and effective powers to investigate and to refer any cases for criminal prosecutions where the evidence clearly shows criminal responsibility. Pending that, the NHRC should step up its efforts to investigate reports of torture and other ill-treatment in police custody.

On occasion, the Government sets up *ad hoc* “**commissions of inquiry**” (under the Commission of Inquiry Act) to look into incidents involving allegations of serious human rights violations, including incidents of torture and deaths in custody. However, their recommendations are rarely implemented and in some cases there have been concerns about the independence and impartiality of commission members. As such, they are generally seen as a way for governments to wipe their hands of the affair in question, without taking any concrete action.

Finally, in the Interim Constitution, the **Office of the Attorney General** is entrusted with responsibility for investigating allegations of ill-treatment in custody or complaints that relatives or lawyers are barred from meeting detained persons. In two cases submitted in 2008, the Attorney General’s Office informed the Asian Human Rights Commission that, upon investigation, the allegations of torture had not been substantiated. Since June 2009, AF has registered 14 complaints with the AG office. However, at the time of writing, AF had not received any feedback regarding these recent complaints.

SAFEGUARDS IN DETENTION

A major review of the regulation of custody is required as current practices, for example, the lack of a central detention register and the failure to designate places of detention, often operate as further barriers to access to justice. The lack of effective safeguards in detention also increases the risk of torture and other ill-treatment of detainees.

For example, incommunicado detention is not permitted by law but in practice many detainees continue to be detained without access to their relatives or a lawyer during the first few days after arrest. Moreover, in relation to a substantial number of detainees, the police do not keep accurate records of their detention. Most commonly, the date of arrest is falsified in the pre-remand register in an attempt to circumvent the constitutional requirement to bring detainees before a court within 24 hours. In the event that a person is released within a number of hours or in the first few days after arrest, their names are often not entered in any police records. The fact that judicial oversight of detention procedures is weak encourages the practice of illegal detention to continue. Those detained illegally are more vulnerable to torture and other ill-treatment. Illegal detention also makes it difficult to prove the fact and date of detention, and that the physical injuries or mental suffering sustained by a person resulted from their being tortured or ill-treated in police custody. Making incommunicado detention illegal and imposing significant penalties for any breaches would, therefore, be a significant step towards the prevention of torture in Nepal.

The TCA requires all detainees to be subject to a medical examination at the time of arrest as well as at the time of release. However, this mandatory provision is often not complied with in practice: while detainees are increasingly taken for examination at the time of arrest, there are concerns regarding the quality of these examinations, and detainees are very rarely taken for examination at the time of transfer to a prison or release. A medical examination on arrest, and then on release or transfer can be crucial to proving that any physical injuries or mental suffering were sustained during the time spent in custody. These problems are exacerbated by the lack of training in forensic examination and documentation within the medical profession. Based on AF's experience of working on torture cases and using the TCA to claim compensation, a low success rate can be attributed in large part to the lack of strong medical reports and evidence from medical professionals.

Similarly, access to family and lawyers is also problematic. Even in those cases where access is granted, it is often very limited. For instance, lawyers are not allowed to meet with detainees in private and are only given limited time to hold discussions with their clients.

All this goes to show that there is great need for legislation or judicial and administrative guidance on custodial standards. For example, in the Indian case of *D.K. Basu v. State of West Bengal*, the Supreme Court of India laid down specific requirements to be followed by the police for arrest, detention and interrogation of any person.

VULNERABLE GROUPS

Juveniles and people from *certain castes or ethnic backgrounds* (e.g. Dalits, indigenous people and other traditionally discriminated groups) are among the groups of detainees most likely to be

subjected to torture or other ill-treatment.

Despite repeated concerns expressed by local and international organisations, the Government of Nepal has not taken any meaningful steps to prevent the torture of *juveniles*. For example, both the Children's Act 1992 (which provides *inter alia* that juveniles detained or imprisoned will be held in juvenile reform homes) and the Juvenile Justice (Procedural) Regulations 2006 remain to be fully implemented. The standards for juvenile detention set out in the Act and Regulations were recently affirmed by the Supreme Court. In a 2008 verdict, the Supreme Court ordered government agencies to improve the infrastructure and capacity of existing juvenile correction homes, mandated the creation of new homes in regions lacking them, and prohibited juveniles from being returned to police custody. In a subsequent Supreme Court decision in March 2009, the court again directed the Government to create more correction homes. Presently, however, there is only one functional Government-run juvenile reform home in the whole of Nepal.

While the overall percentage of *women* who claim they were tortured in detention in recent periods is fairly low, there are concerns for the hundreds of women who were subjected to rape and other forms of torture and ill-treatment during the armed conflict. A 35-day statutory limitation period in which to report cases of rape to the police represents a huge obstacle to justice for these women. The Government should amend the State Cases Act and remove this limitation with retroactive effect and ensure that the transitional justice mechanisms still to be established will also investigate the many incidents of rape and other gender-based violence.

CONCLUSION

Advocacy Forum, REDRESS and APT urge the Committee against Torture to take the above information into consideration when reviewing the implementation of recommendations made after its examination of the second periodic report of Nepal at its 35th Session in 2005. We would also draw the Committee's attention to the attached document where we provide more detailed commentary through reference to the two annexed publications.

The organisations hope that the Government of Nepal will give the highest priority to the full implementation of all outstanding recommendations and will pass a law to criminalise torture, provide fair and adequate reparation to victims, review custody conditions, address the needs of vulnerable groups and put in place effective measures to prevent torture, including all those recommended by the Committee.

COMMENTARY ON IMPLEMENTATION OF RECOMMENDATIONS BY THE COMMITTEE AGAINST TORTURE

What follows is structured according to the 'Concerns and recommendations' section of the Conclusions and recommendations of the Committee against Torture, adopted at its 687th meeting on 22 November 2005 (UN Doc. CAT/C/NPL/CO/2, 13 April 2007).

The chapter and page numbers refer to:

Coalition against torture (Advocacy Forum et al.), *Criminalize Torture* (Kathmandu: 26 June 2009) [hereinafter 'Criminalize Torture'].

Advocacy Forum, Association for the Prevention of Torture, Redress, *Review of the Implementation of Recommendations Made by the Special Rapporteur on Torture, Manfred Nowak, after his Mission to Nepal in 2005* (Kathmandu, London and Geneva: August 2009) [hereinafter 'Nowak submission'].

Definition (par. 12)

The State party should adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention. The State party should provide information to the Committee on domestic jurisprudence referring to the definition of torture as per article 1 of the Convention.

- The Interim Constitution of Nepal, promulgated in January 2007, established torture as a criminal offence and required a law to criminalise torture to be enacted. However, the definition of torture in the Interim Constitution does not comply with the Convention (*Criminalize Torture: 3, 15-16*).
- A December 2007 Supreme Court judgement ordered the government of Nepal to criminalize torture in accordance with Articles 2 and 4 of the Convention (*Criminalize Torture: 1 and 79-80; Nowak submission: 11-12*).
- No Bill providing criminal penalties for torture was passed by the Nepalese legislature. The Torture Compensation Act (TCA) of 1996 remains the only domestic law exclusively relating to torture. As a consequence, torture is still only a civil offence (*Criminalize Torture: 3*). The TCA presents serious shortcomings (*Nowak submission: 10-11*).

Widespread use of torture (par. 13)

The State party should publicly condemn the practice of torture and take effective measures to prevent acts of torture in any territory under its jurisdiction. The State party should also take all measures, as appropriate, to protect all members of society from acts of torture.

- Between June 2008 and May 2009, 19.5% of the 4328 detainees visited and interviewed by Advocacy Forum claimed that they were subjected to torture and/or cruel, inhuman or degrading treatment (*Criminalize Torture, 7-8 and Appendix C (81-84)*). The overall rate

of torture appears to have gradually decreased since the end of the armed conflict though there are fluctuations at the district level (*Nowak submission: 1-2 and Tables 1, 3, 4 and 11(28-29 and 32)*).

- A high percentage of juvenile detainees is tortured by the police (*Criminalize Torture: 8; Nowak submission: 4-5 and Tables 4, 5, 6, 8 (29-31)*).
- Several practices amounting to torture in detention have been recorded (*Criminalize Torture: 9; Nowak submission: 3-4*).
- Main perpetrators of torture and other ill-treatment are the Nepal Police and the Armed Police Force (*Nowak submission: 2-3*).
- Advocacy Forum also received reports of torture perpetrated by non-state actors, especially by members of the Young Communist League (YCL) and armed groups in the Terai (*Criminalize Torture: 9; Nowak submission: 3*).

Detention (Par. 14)

The State party should bring the practice of pretrial detention into line with international human rights norms and ensure that the fundamental rights of persons deprived of liberty are guaranteed, including the right to habeas corpus, the right to inform a relative, and the right of access to a lawyer and a doctor of one's choice. The State party should ensure that any measure taken to combat terrorism is in accordance with Security Council resolutions 1373 (2001) and 1566 (2004), which require that anti-terrorist measures be carried out with full respect for, inter alia, international human rights law, including the Convention. The State party should provide to the Committee information on the number of people still in pretrial detention.

- Misrepresentations by police and other state officials, apparently to hide detainees or cover-up the fact that their detention is illegal, continue to present an obstacle to the effective functioning of the *habeas corpus* remedy. Weak sanctions for perjury and contempt of court are contributing factors in relation to the way in which the authorities respond to *habeas corpus* petitions (*Nowak submission: 16-17*).
- Incommunicado detention has not been made illegal in Nepal and many detainees continue to be detained without access to their relatives or a lawyer during the first few days after arrest. In those cases where access is granted, it is often very limited. For instance, lawyers are not allowed to meet with detainees in private and are only given limited time to hold discussions with their clients. Families face similar problems. (*Nowak submission: 12-13 and 15*).
- AF lawyers have observed that while there is a vast increase in the number of detainees taken for a medical check-up soon after they are admitted into custody, there nevertheless remain serious concerns about the way in which medical examinations are conducted (*Nowak submission: 15 and Tables 9-10 (31-32)*).

National Human Rights Commission (par. 15)

The State party should take the necessary measures to support the work of the National Human Rights Commission, ensuring its recommendations are fully implemented.

- The NHRC's recommendations to the Government are rarely implemented in practice, despite repeated calls from civil society and the NHRC itself (*Nowak submission: 22*).

Independence of the judiciary (par. 16)

The State party should make every effort to guarantee the independence of the judiciary, including ensuring that security forces comply with court orders. The State party should provide to the Committee information on the composition, mandate, methods of work and investigations of the Royal Commission for Corruption Control, including whether it exercises jurisdiction over constitutional matters in full conformity with the requirements of the Convention and whether its rulings are subject to judicial review. The State party is requested to provide the same information concerning the Justice Sector Coordination Committees.

- Despite obvious and repeated lies and misinformation from officials in court (including by the Nepal Army during the time of the conflict), none has ever been prosecuted or otherwise disciplined by the courts for perjury. Weak sanctions for perjury and contempt of court are contributing factors in relation to the way in which the authorities respond to *habeas corpus* petitions (*Nowak submission: 16-17*).

Education on the prohibition against torture (par. 19)

The State party should intensify its education and training efforts relating to the prohibition against torture, and introduce evaluation and monitoring mechanisms to assess their impact.

- OHCHR-Nepal, NHRC, AF and others have initiated discussions with the Nepal Police regarding human rights training, including on legitimate interrogation methods. However, as of late August 2009, the police have not followed-up to these initial discussions and it appears they do not give priority to human rights training. Similarly, the judges and public prosecutors have not given high priority to incorporating human rights into their in-service training, although generally they are found to be more aware of human rights than the police (*Nowak submission: 19*).

Interrogation and detention (par. 20-21)

The State party must ensure that no recourse is made, under any circumstances, by law enforcement personnel to interrogation methods prohibited by the Convention. In addition, the State party should provide to the Committee information, including examples, on measures adopted to review interrogation rules, instructions, methods and practices applicable to law enforcement officials.

[...] the State party should:

- (a) Adopt the necessary measures to reduce pretrial detention wherever possible;

- Information collected by Advocacy Forum shows that nearly all detainees are remanded into police custody for 25 days regardless of the offences of which they are suspected. The initial remand of each and every accused happens as a matter of routine without the court verifying whether the prosecution has stated valid reasons why they should be detained (*Nowak submission: 13-14*).

(b) Immediately transfer all detainees to legally designated places of detention that conform to international minimum standards;

- Advocacy Forum registered a case of four detainees held in unofficial places of detention (private houses) for four days in May 2009 (*Nowak submission: 2-3 and Table 2 (28)*).
- Police have, on occasion, maintained that there is no obligation to register detainees until they are taken to an ‘official’ place of detention – usually a District Police Office. However, there are no express legal provisions designating police stations as ‘official’ places of detention nor is there is law that prohibits Nepal Police Offices from detaining people, provided that detainees are produced for remand hearings within 24 hours (*Nowak submission: 16*).

(c) Take immediate steps to ensure that all arrests and detentions are systematically documented, in particular of juveniles. The State party should consider creating a central register for persons deprived of liberty, to be made accessible to national and international monitors;

- In a substantial number of cases, the police do not keep accurate records of detentions (*Nowak submission: 12-13 and 16*).
- The Armed Police Force (APF) has become increasingly involved in arrests related to armed groups operating in the Terai region, and has held people for up to four days. It does not operate or maintain official detention facilities or detention registers (*Nowak submission, 16*).
- Juveniles continue to be detained in police custody together with adults, in violation of the law and of Supreme Court orders (*Nowak submission: 5-6*).

(d) The State party should consider amending the relevant section of the Compensation Relating to Torture Act of 1996, to ensure that all detainees have access to a proper medical examination at the time of arrest and upon release;

- AF lawyers have observed that while there is a vast increase in the number of detainees taken for a medical check-up soon after they are admitted into custody (*Nowak submission: 15 and Tables 9-10 (31-32)*).
- There nevertheless remain serious concerns about the way in which medical examinations are conducted. In many cases, the police insist on being present, thereby preventing the detainee from speaking openly to the doctor for fear of reprisals. Doctors often do not fully document the wounds they observe on the body out of fear of repercussions from the police, misplaced loyalties or because of a lack of knowledge and skills in medico-legal documentation. In addition, there are concerns that detainees are not provided adequate medication (*Nowak submission: 15*).

(e) Prohibit the use of incommunicado detention. The Committee recommends that persons held incommunicado should be released, or charged and tried under due process. The State party should provide to the Committee information on the exact number and location of detention places and other detention facilities used by the Royal Nepalese Army, the Armed Police Force and the Police, and the number of persons deprived of liberty;

- Incommunicado detention has not been made illegal in Nepal and many detainees continue to be detained without access to their relatives or a lawyer during the first few days after arrest (*Nowak submission: 12-13*).

(f) The State party should take measures to ensure compliance by security forces of all orders of the courts, including habeas corpus;

- Misrepresentations by police and other state officials, apparently to hide detainees or cover-up the fact that their detention is illegal, continue to present an obstacle to the effective functioning of the *habeas corpus* remedy. Weak sanctions for perjury and contempt of court are contributing factors in relation to the way in which the authorities respond to *habeas corpus* petitions (*Nowak submission: 16-17*).

(g) The State party should take the necessary steps to protect juveniles from breaches of the Convention, and ensure proper functioning of a juvenile justice system in compliance with international standards, differentiating treatment according to age.

- A high percentage of juvenile detainees is tortured by the police (*Criminalize Torture: 8; Nowak submission: 4-5 and Tables 4, 5, 6, 8 (29-31)*).
- Sections 42 (a) and (b) of the Children's Act, 1992 provide that juveniles detained or imprisoned will be held in juvenile reform homes. Presently, however, there is only one functional government-run juvenile reform home in the whole of Nepal. Similarly, the provisions of the Juvenile Justice (Procedural) Regulations, 2006 remain to be fully implemented.
- In September 2008 the Supreme Court ordered the government to improve child correction homes and prohibited child correction homes from returning children to police custody. These measures were affirmed in a subsequent Supreme Court decision in March 2009. However, juveniles continue to be detained in police custody together with adults, in violation of the law and of the Supreme Court order (*Criminalize Torture: 8-9; Nowak submission: 5-6 and 14-15*).

Impunity (par. 24-25)

The State party should send a clear and unambiguous message condemning torture and ill-treatment to all persons and groups under its jurisdiction. The State party should take effective legislative, administrative and judicial measures to ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances are promptly investigated, prosecuted and the perpetrators punished. In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the investigation.

- The attitude of state authorities does not show real commitment towards ending impunity (*Nowak submission: 7-10*).
- Those suspected of torture are not prosecuted or punished. In a few cases, police have been suspended briefly pending an internal inquiry (*Nowak submission: 24*).
- In October 2008, the CPN-M-led Government recommended the withdrawal of 349 criminal cases (investigations, charges and convictions) of a so-called ‘political nature’, including cases of serious human rights abuses (murder, attempted murder and rape), the majority from the conflict period. Most cases were against CPN-M members, some of whom were senior members of the Government at the time, raising concerns about ongoing impunity and the de facto provision of amnesties (*Nowak submission: 24-25*).
- In Advocacy Forum’s experience, no public official has ever been suspended pending resolution of a complaint before the Nepal Police Human Rights Cell. In the few instances where disciplinary sanctions have been imposed on public officials, the punishments have been grossly disproportionate to the gravity of the offences committed (*Criminalize Torture 12; Nowak submission: 23*).
- In October 2008 the Attorney General’s Office informed the Asian Human Rights Commission that it had investigated two cases submitted in 2008 and it had found that the allegations of torture had not been substantiated.
- AF reported a total of 14 complaints the Attorney General’s office between June and August 2009. No feedback regarding these complaints had been received as of August 2009.
- In June 2007, the Nepali Supreme Court issued a decision in which it ordered the government to criminalize enforced disappearances and establish a high-level commission to investigate disappearances. The following November, Nepal’s Interim Legislature instructed the government to draft a law on enforced disappearances, that would be in line with the June decision of the Supreme Court and with the International Convention for the Protection of All Persons from Enforced Disappearances. At the time of writing, a Bill for the criminalization of enforced disappearances and the establishment of a Commission of Inquiry into Enforced Disappearances had not been submitted to Parliament yet for discussion and adoption.

The State party should establish an independent body to investigate acts of torture and ill-treatment committed by law enforcement personnel. The State party should provide to the Committee information on the mandate, role, composition and jurisprudence of the special police courts.

- There have been no independent investigations into the allegations of systematic torture and disappearances during the armed conflict (*Nowak submission: 21*).
- The NHRC’s recommendations to the Government are rarely implemented in practice, despite repeated calls from civil society and the NHRC itself (*Nowak submission: 22*).
- The Nepal Police Human Rights Cell has not proven to be either impartial or effective. The large majority of victims are afraid of filing an official complaint, as they do not trust its independence and good faith. The way the Cell handles the few complaints actually made presents significant problems. At times, its practices have put victims at further risk (*Criminalize Torture, 11-12; Nowak submission: 22-23*).

Marginalized and disadvantaged groups or castes (par. 26)

The Committee reaffirms that it is the duty of the State party to protect all members of society, in particular citizens belonging to marginalized and disadvantaged groups or castes, such as the Dalits. The State party should take specific steps to safeguard their physical integrity, ensure that accountability mechanisms are in place guaranteeing that caste is not used as a basis for abuses, unlawful detention and torture, and take steps to ensure more diverse caste and ethnic representation in its police and security forces. The State party should include information on caste discrimination in its next periodic report.

- Advocacy Forum's analysis shows that people belonging to the various Dalit groups and ethnic groups in the Terai region are more likely to be tortured in the 18 districts where AF has a program of visits to places of detention (*Nowak submission: 6 and 31 (Tables 7 and 8)*).

Gender-based violence (par. 27)

The State party should ensure that procedures are in place to monitor the behaviour of law enforcement officials, and should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. The State party should provide to the Committee a list of cases of gender-based violence and abuse against women and children in custody that have been investigated and prosecuted, and the perpetrators punished.

- While the overall percentage of women who claim they were tortured in detention during October 2008 to June 2009 is 10.7% (fairly low in comparison to male detainees), there are concerns for the hundreds of women who were subjected to rape and other forms of torture and ill-treatment during the armed conflict (*Nowak submission: 6 and Table 4*).
- A 35-day statutory limitation to report cases of rape to the police represents a huge obstacle to justice for women raped during the armed conflict (*Nowak submission: 6-7*).

Right to complaint (par. 28)

[...] the State party should:

(a) Make available to victims of torture the conclusions of any independent inquiry in order to assist them in pursuing compensation claims. The State party should amend its current and planned legislation so that there is no statute of limitation for registering complaints against acts of torture and that actions for compensation can be brought within two years from the date that the conclusions of inquiries become available;

- The Torture Compensation Act (TCA) of 1996 includes statutory limitations of 35 days. It also includes a provision imposing monetary penalties on those making groundless claims of torture, which may deter victims from ever becoming involved with the court system (*Criminalize Torture: 3*).

(b) Consider adopting legislative and administrative measures for witness protection, ensuring that all persons who report acts of torture or ill-treatment are adequately protected.

- The vulnerability of victims to threats and coercion by the same officials who have tortured them is perhaps the most substantial obstacle to the successful prosecution of public officials. See the case of Mr. Umesh Lama (*Criminalize Torture: 34-35*).

Compensation to torture victims (par. 29)

The State party should ensure that compensation awarded by the courts or decided upon by the National Human Rights Commission is paid in a timely manner. The State party should provide to the Committee information on the total amount paid in compensations to victims of torture.

- The October 2008 Views of the UN Human Rights Committee in *Sharma v. Nepal*, recommending inter alia that the victims receive compensation, have yet to be implemented (*Nowak submission: 9-10*).
- In the absence of independent bodies which would make recommendations for compensation and other forms of reparation to the victims, some reparation initiatives are underway and decisions to award compensation are being made without proper policies (*Nowak submission: 26*).
- Of 70 cases registered by Advocacy Forum under the Torture Compensation Act (TCA), only 14 have resulted in victim compensation. In eight of these cases, the compensation initially awarded by the district courts was only between Nrs 10,000 and 15,000 (133-200 USD). Not one of the victims had been paid at June 2009 (*Criminalize Torture: 39; Nowak submission: 25*).

Use of statements made as a result of torture (par. 30)

The State party should provide to the Committee information on both legislation and jurisprudence that exclude statements obtained as a result of torture being admitted as evidence.

- Coerced confessions remain commonly used in criminal proceedings throughout Nepal. Although, under the TCA and Evidence Act, forced self-incriminatory statements are ostensibly inadmissible in court proceedings, police continue to torture and humiliate detainees in efforts to coerce confessions; the 'evidence' so obtained is frequently used to establish suspects' guilt during trials (*Nowak submission: 17-19*).
- Nepali law expects detainees to prove that they were in fact tortured, reversing the burden of proof. Furthermore, the law is not clear as to the exact procedure to be used by courts in order to establish whether or not a confession was extracted under torture (*Nowak submission: 18-19*).