



REVIEW OF THE IMPLEMENTATION OF RECOMMENDATIONS MADE BY THE SPECIAL RAPPORTEUR ON TORTURE, MANFRED NOWAK, AFTER HIS MISSION TO NEPAL IN 2005

This review is submitted to contribute to the Special Rapporteur on Torture's survey of the implementation of recommendations made after his mission to Nepal in 2005.¹ This review focuses on progress made in Nepal during the last year, with specific reference to concerns highlighted in the Special Rapporteur's report to the Fourth Session of the Human Rights Council in March 2007.² The submission first sets out general issues in relation to torture and other cruel, inhuman or degrading treatment or punishment ("other ill-treatment") in Nepal and then provides information on the implementation of the Special Rapporteur's specific recommendations. The submission is predominantly based on information gathered by Advocacy Forum lawyers during regular visits to places of detention. Advocacy Forum, REDRESS and Human Rights Watch also provide legal and political analysis.

A. GENERAL SITUATION OF ONGOING TORTURE AND OTHER ILL-TREATMENT IN NEPAL

Statistics on Torture and Other Ill-treatment Advocacy Forum monitors places of detention (mainly police stations, prisons and forestry offices). In the period between January and September 2008, Advocacy Forum interviewed 3,095 detainees (including juveniles) in 15 districts where the organization has offices (Baglung, Banke, Bardiya, Dhanusha, Dolakha, Jhapa, Kanchanpur, Kapilvastu, Kathmandu, Kaski, Morang, Ramechhap, Rupandehi and Surkhet). Of this number, 760 (24.6%) claimed that they had been tortured or ill-treated while 1,279 (41.3%) claimed that they were illegally detained.

In respect of the scale on which torture and other ill-treatment currently occur in Nepal, according to statistical data collected by Advocacy Forum, on average approximately 33% (32.91%) of detainees in police custody report that they were tortured or ill-treated. However, this percentage is as high as 96% in the district of Kailali, where Advocacy Forum only started to conduct regular visits to places of detention in early 2008.³

¹ Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Civil and Political Rights, Including: The Questions of Torture and Detention, Mission to Nepal, U.N. Doc. E/CN.4/2006/6/Add.5 (9 January 2006).

² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council", U.N. Doc. A/HRC/4/33 (15 January 2007).

³ Advocacy Forum, "Hope and Frustration. Assessing the Impact of Nepal's Torture Compensation Act, 1996", June 2008, page 48-49.

Methods of Torture Currently, the most common methods of torture used by the Nepalese police include punching detainees indiscriminately all over their bodies; beating detainees on their feet with sticks and rubber pipes; forcing detainees to jump up and down (allegedly to increase blood circulation in order to reduce visible signs of torture); cutting the skin on different parts of detainees' bodies with razor blades; forcing detainees to strip naked and then beating them; electrocution; inserting nails or needles under detainees' toe nails; making detainees lie on the floor and beating them; and slapping detainees on the face.

In terms of psychological methods of torture and other ill-treatment, the most common forms include mock executions; intimidation; deprivation of food and sleep; threats of further beatings; threats of charging detainees with false allegations; forcing detainees to confess to fabricated charges and to sign documents; ordering detainees not to disclose the torture or other ill-treatment to human rights defenders or the media; and ordering detainees not to bring a complaints against the police.

Perpetrators of Torture and Other Ill-Treatment Torture and other ill-treatment are most commonly reported to be carried out by the police, Armed Police Force (APF, especially active in the Terai region), customs officers, officials of the Forestry Department (who have powers to arrest and investigate in national parks), as well as by the Young Communist League (YCL, the youth wing of the Communist Party of Nepal-Maoist) and similar youth organisations set up by other political parties. A number of armed groups operating in the Terai region such as, among others, the Janatantrik Terai Mukti Morcha (Jwala) (JTMM-J), Janatantrik Terai Mukti Morcha (Goit) (JTMM-G), Akhil Terai Mukti Morcha, Nepal Defence Army, Terai Cobra, Madhesi Mukti Tigers, Terai Tigers, Terai Liberation Tigers, and Madhesi Viral Killers are also reported to abduct, torture and ill-treat people.⁴

According to the 2008 INSEC Human Rights Yearbook, a total of 1,700 people were abducted throughout Nepal during 2007. A majority were carried out by the Communist Party of Nepal – Maoist (CPN-M), YCL, JTMM-J and JTMM-G.⁵ The Yearbook reported that 354 people were abducted by CPN-M, 183 by the JTMM-J, 164 by YCL, 98 by JTMM-G, 122 by unidentified groups and 36 by Madhesi Tigers. According to the same source, 281 people were beaten and 144 persons were “threatened” by YCL, while 98 people were reported to be beaten by Madhesi Janaadhikar Forum, one of the leading parties in the Government. (A high number of abductions and degree of violence occurred in the context of the Constituent Assembly elections in April 2008, though no figures are available.)

⁴ The status of the YCL under international law is under discussion. Throughout the time the CPN-M was not in government, it could be argued that it should have abided by international humanitarian law as a proxy to a former armed opposition group which has still not formally been disarmed. However, since August 2008, when the CPN-M formed the government, it arguably could be said to be a vigilante group. The status of many of the armed groups in the Terai is even more problematic. Many of them formally have a political agenda, but on a day to day basis their activities have much more of a hallmark of criminal gangs engaged in extortion, smuggling, etc.

⁵ Informal Sector Service Centre (INSEC), Human Rights Yearbook 2008, also available at http://www.inseconline.org/YB_Book.php.

CPN-M cadres themselves have been responsible for a number of abductions and assaults on journalists, members of political parties and others. Abductions were primarily though not exclusively reported in the context of “law enforcement” activities, or enforcement of the CPN-M’s social norms, for example, with regard to “illicit” sexual relations. Although the number of abductions, assault, ill-treatment and other abuses by CPN-M dropped significantly immediately after the signing of the Comprehensive Peace Agreement and has further reduced after April 2008, reports of such abuses by the YCL have continued.

There is a worrying development amongst other political parties, for example, the Nepali Congress and the Communist Party of Nepal (United Marxist Leninist) (CPN-UML) setting up its own youth wing, who have recently engaged in similar tactics, including abductions and beatings. Reports of clashes between the cadres of YCL and Youth Force (the youth wing of the CPN-UML) and attacks between the two groups were reported by different media especially during the month of September 2008. Cadres of Youth Force and YCL clashed on 17 September 2008, injuring six people in Makwanpur following a dispute on collecting tax from the vehicles. Both the groups are competing to take control of law and order into their hands. These groups have also been accused of using children for political purpose in some districts.

Profile of Victims of Torture and Other Ill-Treatment Most people tortured or ill-treated in police custody are ‘common criminal’ suspects or members of certain social groups who are perceived to be ‘illegal,’ such as street children, prostitutes, homosexuals and homeless people. Those tortured and ill-treated by the YCL and Terai armed groups are usually members of rival political parties, many of whose activities also border on the criminal.

In addition, after 10 March 2008, when Tibetans living in Katmandu gathered to mark “Tibetan National Uprising Day,” the anniversary of the 1959 Tibetan rebellion against China’s rule in Tibet, there were a series of protests against the Chinese Government’s harsh crackdown in Tibet. The Nepali authorities, in their efforts to appease China, opposed such demonstrations. During this time, the Police repeatedly violated the rights of Tibetans, for example: unnecessary and excessive use of force; arbitrary arrests; sexual assault of women during arrest; arbitrary and preventive detention; beatings in detention; unlawful threats to deport Tibetans to China; and unnecessary restrictions on freedom of movement in the Katmandu Valley.⁶

Ongoing Impunity Impunity for torture and other ill-treatment carried out before, during and after the 10-year armed conflict, which came to an end in 2006, has been and continues to be a major concern.

⁶ Human Rights Watch, ‘Nepal: Abuses against Tibetans Protesting China’s Tibet Crackdown’, July 24, 2008, also available at <http://hrw.org/english/docs/2008/07/23/nepal19446.htm>.

B. IMPLEMENTATION OF THE SPECIAL RAPPORTEUR ON TORTURE'S RECOMMENDATIONS

This part of the review considers the progress made by the Government of Nepal in implementing a number of the Special Rapporteur on Torture's recommendations.

Recommendation (a): *The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted.*

After protracted negotiations on the formation of a government, a Common Minimum Programme (CMP) was agreed in late August 2008. The 50-point programme, among other commitments, states that:

- Special attention shall be paid to constitutional supremacy, independence of the judiciary, fundamental human rights, press freedom and rule of law;
- Crime, anarchy and the culture of impunity shall be ended, consolidating law and order. To make independent and accountable administration and security organs, the Code of Conduct (CoC) shall be developed for the people's realization of security.

The CMP further states that People's Liberation Army (PLA) combatants would be rehabilitated within six months; that a high-level security committee would be appointed to develop a national security policy; and that a National Peace and Rehabilitation Commission, High Level Truth and Reconciliation Commission (TRC), High Level Commission for State Restructuring, Commission on Disappearances, and Land Reforms Commission would all be set up.

Beyond the reference to the appointment of a TRC and Commission on Disappearances, the CMP was silent in relation to accountability for past human rights abuses. To date, none of the highest authorities have given any attention to ending the existing climate of impunity for past as well as current human rights abuses.

On several occasions, the Home Minister has made statements in which he has promised to address the lack of public security and absence of the rule of law, and encouraged the Nepal Police to restore law and order at the earliest opportunity. On 7 September 2008, he gave 15 instructions to the Inspector General of Police to "establish law and order".⁷

Impunity for current and past crimes continues. Not a single member of the security forces or the CPN-M has been held criminally accountable or convicted for acts of torture, other ill-treatment or other human rights abuses committed during the conflict.

⁷ According to nepalnews.com, the instructions included to "enhance security, control smuggling and revenue leakage, control activities of Tibetan refugees, improve traffic situation and strictly enforce the prohibition of entry for Nepalese nationals in casinos and control criminal gangs, among others. See <http://www.nepalnews.com/archive/2008/sep/sep07/news01.php>.

Instead, attempts to grant amnesties for severe human rights violations continue despite the Government's plans to set up the TRC and the Disappearances Commission.

On December 23, 2007 an agreement was signed by the seven party alliance (SPA) requiring it to establish the following commissions within one month:

- Commission for the Investigation of Disappearances
- Truth and Reconciliation Commission
- State Reconstruction Commission
- Commission for the Study and Recommendation for Scientific Land Reform
- High Level Committee for Monitoring the Effective Implementation of the Comprehensive Peace Accord and other Agreements
- High Level Peace Commission

After this, there were fears that the TRC Bill would be expedited without the participation and consultation of stakeholders. Following extensive criticism from civil society and the international community, the Government announced that, given the gravity of the issue, further consultations were necessary.

A fourth draft of the TRC Bill was circulated in March 2008. In that draft, explicit references to amnesty provisions were removed. However, provisions providing for reconciliation remained, creating confusion about the powers of the Commission to "cause" reconciliation. There have been no further drafts circulated since the new Government took office.

In the meantime, the TRC Bill is being used to prevent meaningful investigations into abuses committed by Maoists and the security forces during and after the 10-year conflict. For example, the TRC has been cited by the police as a reason not to proceed with investigations in several instances. For example, in the case of Arjun Bahadur Lama⁸, both the Chief District Officer and the Nepal Police have refused to register a First Information Report (FIR, complaint) and, in a written statement, police cited insufficient evidence and that the case would fall under the jurisdiction of the TRC as the grounds for refusal. In three other cases, the Appellate Court in Biratnagar has quashed petitions in relation to killings, accepting police arguments that killings during the armed conflict will be the subject of investigations by the yet-to-be-established TRC and that, therefore, police have no duty to investigate. An appeal against one of the Appellate Court decisions is currently under consideration by the Supreme Court.

⁸ Arjun Bahadur Lama, a member of a royalist organization, Rashtriya Ekta Parishad, living in Kavre District, was abducted by members of the CPN-M in April 2005. According to witnesses, the cadre marched him through various villages in Kavre District. In late June 2005, they took him to Buddhakani Village Development Committee (VDC), where he was allegedly killed. The CPN-M claimed that he was killed on the same day he was taken during a clash with security forces but other sources which subsequently saw Lama believe he was killed after the abduction.

Perpetrators of killings, disappearances, torture and other ill-treatment, and other human rights abuses, whether committed by the State, by CPN-M cadres or by armed groups, continue to enjoy almost total impunity.

There is almost a complete lack of political will to address the issue of accountability for serious human rights violations and abuses committed either during or after the conflict. Few steps have been taken to reform the security forces. For example, although a new Army Act was adopted in 2006, the Nepal Army remains outside the purview of the law for all intents and purposes and there is no sign of the political will needed in order to “grip the generals, or to build the capacity to make civilian control of the military a reality – both essential foundations for a democratic state”.⁹ To date, no effective internal or external oversight mechanisms have been put in place in the Nepal Police or Nepal Army, and those responsible for or otherwise implicated in serious human rights violations remain in office. (See also below, comments on Recommendation (i)).

Both the Nepal Army and the PLA have been insulated from public criticism largely due to fear. Given that an effective TRC or individual war crimes prosecutions are unlikely, a vetting mechanism built into any integration process should be ensured. For example, the various arms of the security forces need to be suitably downsized, more representative of all communities and subject to democratic control. At the moment, the security forces are a heavy drain on resources and a threat to peace.

Recommendation (b): *The crime of torture is defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture;*

Article 26(1) of the Interim Constitution of January 2007 requires the Government to criminalize torture. It states:

[n]o person who is detained during investigation, or for trial or for any other reason, shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.

To date, this provision has not been implemented in legislation. The Government has repeatedly stated that it is drafting a bill, but no progress has been reported. Despite repeated requests, no details of the draft have been made available to the public.

According to the Government’s communications with the Special Rapporteur, there will be consultations with different stakeholders and inputs will be sought from them in order to enrich the draft and incorporate their views.¹⁰ To date, this has not happened.

⁹ Sam Cowan, “The Lost Battles of Khara and Pili”, *Himal magazine*, September 2008, Vol 21, No. 9, pages 25-30

¹⁰ (as reported in the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum: Follow-up to the recommendations made by the Special Rapporteur: Visits to Azerbaijan, Cameroon, Chile, China, Colombia, Georgia, Jordan, Kenya, Mexico, Mongolia, Nepal, Pakistan, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela, U.N. Doc. A/HRC/7/3/Add.2 (18 February 2008) at para. 426)

The Government has informed the Special Rapporteur that the new bill defines torture in accordance with “the spirit of the Convention and explicitly makes any form of torture and ill-treatment by public officials a criminal offence punishable under the law. Under the new bill, the offender shall be punished for up to 5 years of imprisonment or fine or both depending upon the gravity of the offence.”¹¹

There are currently three provisions on assault in the *Muluki Ain* (country code): simple assault, serious bodily harm and accidental assault. The maximum penalty for serious bodily harm is 8 years’ imprisonment with a fine. However, these provisions are never or rarely used in relation to torture cases because victims are fearful of making complaints to the police, who are often the actual perpetrators of the torture.¹²

Recommendation (c): *Incommunicado detention be made illegal, and persons held incommunicado released without delay.*

Though incommunicado detention is less common now than during the conflict, unacknowledged detention, failure to observe court orders regarding releases, and illegal (unacknowledged) detention, particularly by the APF, continue to occur from time to time. Often, after detaining an individual incommunicado for several days, the police subsequently record the arrest date as the day on which this person was finally presented in court.

Women continue to be tortured, ill-treated and sexually harassed by the police. For example, during investigations, women report being sexually harassed with abusive language, stripped naked, beaten and threatened with rape. In many cases, male police officers were found to have tortured female detainees. Moreover, during incommunicado detention, women are often sexually abused and then threatened not to disclose what happened.

For example, after Advocacy Forum informed the international community about the torture of Sumitra Khawas who was stripped naked and beaten by police in Morang District, she was subsequently denied access to her lawyers and held in incommunicado detention for about two weeks.¹³ Ms. Khawas was also told not to disclose the incident to human rights defenders. No investigation has been carried out into this case despite national and international interest in the case.

Recommendation (d): *Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority,*

¹¹ *Id.* at para. 426.

¹² See REDRESS, Responses to Human Rights Violations: The Implementation of the Right to Reparation for Torture in India, Nepal and Sri Lanka (Report issued in February 2003 in collaboration with Commonwealth Human Rights Initiative) at page 47.

¹³ Urgent Appeal issued by Amnesty International: http://amnesty.org.uk/news_details.asp?NewsID=17883

where no further unsupervised contact with the interrogators or investigators should be permitted.

There continue to be many cases where detainees have not been provided with letters of arrest/detention and have been held in police custody for extended periods of time, up to several weeks. For instance, 2,955 (95.5%) out of the 3,095 detainees interviewed by Advocacy Forum during the period from January to September 2008, reported that no arrest notice was issued to them.

The widespread practice of arbitrary detention, torture and other ill-treatment of juveniles in police custody is a major concern. Furthermore, juveniles are detained in inappropriate conditions.

For the period from January to September 2008, Advocacy Forum interviewed 838 juveniles (438 children under 16 years and 400 children who were 17). 240 claimed that they were tortured or ill-treated (28.6%). Furthermore, 223 juveniles (26.6%) reported that they had not received a medical examination, 813 (97%) reported that no arrest notice was issued, 284 (33.9%) said they were denied access to their family and 311 (41%) said they were denied access to food before they were remanded. Only 120 juveniles (14.3%) were granted access to a lawyer and 86 (10.3%) were allowed to read a statement before signature. 314 (49.1%) were illegally detained. Only in 25 cases did judges enquire whether they were tortured when brought in front of the court.

It is very common in Nepal for detainees to be forced to sign “confessions” or documents which they were unable to read while in police custody. According to national law, confessions extracted under torture are not admissible as evidence. It is common for defendants to inform courts at the time of committal hearings that they did not give statements voluntarily, at which point such statements are often ruled out as evidence.¹⁴ However, in many other cases this does not happen, or the victim is afraid to allege torture or other ill-treatment. It is astonishing that police continue to extract confessions under duress, which results in the acquittal of people who may actually be responsible for certain crimes (see also Recommendation (g)).

A further longstanding concern relates to the role played by Chief District Officers (CDOs) who have judicial powers under various laws (including the Public Offences Act, and the Arms and Ammunition Act) and can sentence suspects to up to 8 years’ imprisonment.

Advocacy Forum is concerned by recent amendments passed in November 2007 to the Arms and Ammunition Act of 1963 which extends the maximum period of imprisonment that can be imposed for offences under the Act from 3 years to 8 years by order of the

¹⁴ Article 9 (2) (2) of the Evidence Act states that statements made by an accused in respect of charges against him at any place but a court of law can be accepted as evidence provided that it is satisfied that “the accused as not been forced to make such a statement, or that such statements had not been extracted by torture or threats to place him in a situation in which he was compelled to make the statement against his will”.

most senior administrative officer at the district level, the Chief District Officers. This amendment was approved by the newly-elected Constituent Assembly amid growing concern in the country over a rise in crime in the aftermath of the 10-year-long armed conflict. Among recent cases of people charged under this Act was a former child combatant. After the UN provided a letter confirming his status, he was acquitted.

Granting the CDO such power to imprison (and fine) raises concerns in relation to individuals' right to a fair trial in terms of a hearing before an independent and impartial tribunal.

Recommendation (e): *The maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer.*

It has been observed during detention visits that detention registers are not systematically updated despite advocacy by various actors, including the Special Rapporteur. The police use two registers: one lists the name of detainees before remand and the other after remand. Lawyers and the public do not have access to registers in all districts. As the police are legally entitled to detain a person for 24 hours, they often do not register the names of arrested/detained persons immediately and if someone is released without charge after a short period of detention (which could exceed 24 hours), their names often do not feature in police registers.

The Armed Police Force (APF) has become increasingly involved in arrests related to armed groups, but does not operate or maintain official detention facilities or detention registers. The APF does not have clear legal powers to arrest and detain. However, in the context of ongoing unrest in the Terai region, its forces have been deployed alongside the Nepal Police. There have been some reports of illegal detention by the APF. In addition, the APF has been responsible for more than a dozen killings as a result of using excessive force during demonstrations.

The Home Ministry maintained a central register of detainees for some time in 2006. However, it fell into disuse after a few months and has not been reactivated.

Recommendation (f): *All detained persons be effectively guaranteed the ability to challenge the lawfulness of their detention, e.g. through habeas corpus. Such procedures should function effectively and expeditiously.*

While the denial of detainees' rights to make *habeas corpus* applications to challenge their detention is not as serious as during the conflict, concerns remain as to delays in bringing detainees before a court within 24 hours as provided for by the Constitution.¹⁵

¹⁵ Article 24 (3) of the Interim Constitution of January 2007 provides that an "arrested person should be brought before judicial authority within 24 hours of the arrest excluding the time required to travel".

Recommendation (g): *Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms.*

In many cases lawyers are not present when detainees initially make “confessions”, which are often extracted after beatings, threats or other pressures. Police openly admit that they rely heavily on confessions for criminal investigations, and that they constitute the main and sometimes almost exclusive part of an investigation. Some members of the police have even implied that if they did not use force they would not be able to obtain a confession (see also Recommendation (d)).

Recommendation (h): *Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination.*

As previously reported, most detainees do not make formal complaints of torture and other ill-treatment when taken before a judge or prosecutor, mostly through fear of reprisals. Though some judges have developed a practice of asking male detainees to remove their shirts and questioning them about their treatment at the hands of the police, such practice has not become uniform and in any case is inadequate to determine whether all types of torture or other ill-treatment have been committed, particularly methods which do not leave physical marks and psychological torture or ill-treatment.

There is no systematic practice for judges to test the voluntary nature of a confession and many confessions extracted under duress are still admitted as evidence. This happens in cases in which the victim fears telling the court about torture or ill-treatment in front of the police officers involved in whose custody they remain.

The State Cases Act 1993 provides the right for detainees to ask the judicial authorities for medical examinations without any fear of reprisal.¹⁶ Furthermore, 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, these mandatory provisions are not complied with in practice: while detainees are increasingly taken for examination at the time of arrest but very rarely taken for examination at the time of transfer to the prison or release.

Recommendation (i): *All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the opinion of the Special Rapporteur, the NHRC might be entrusted with this task.*

In the period between late August 2007 and September 2008, Advocacy Forum made 34 complaints to the Nepal Police Human Rights Cell in relation to 28 individual cases of torture by police; one case of torture by members of the YCL; one case of rape by a

¹⁶ A/HRC/4/33/Add.2, para. 438

Nepal Army soldier; and one case of rape by police. In 22 of these cases, responses were received. Of these responses, 20 were mere acknowledgements of the complaints. No less than seven further reminders relating to 18 cases were sent, but as of early November 2008, no substantial responses had been received.

In relation to 12 cases, Advocacy Forum is aware that a communication was sent by the Human Rights Cell to the relevant District Police Office (DPO) in relation to the complaint as part of their investigation. In seven cases, the DPO was in fact the exact place where the torture allegedly took place, creating a clear risk that the victim would be subject to further torture or other ill-treatment. Advocacy Forum is aware of at least six cases where this actually happened.

The Human Rights Cell definition of "investigation" appears to comprise merely of sending a letter with details of the complaint provided by Advocacy Forum to the relevant DPO and to ask that DPO to respond to the allegations. We know of no cases in which the Human Rights Cell has itself visited the victim and interviewed him or her privately to ascertain the veracity of the allegation, or of any interviews with other detainees or other police officers who may have been witnesses to the torture. We are not aware of any police officer having been suspended pending the outcome of Human Rights Cell investigations.

The "investigations" conducted by the Human Rights Cell do not qualify as the prompt and thorough investigations recommended by the Special Rapporteur. On the contrary, they appear to act as one-sided window dressing exercises which at times have put victims at further unnecessary risk.

The punishments that have been imposed bear no relationship to the gravity of the offences committed. For instance, in one case, the promotion of some of the police personnel involved in mistreatment of a pregnant woman at Baglung police station was delayed for two years. The woman, Rama Sris, was arrested in a dispute between her husband and his employer. When she started to go into labour while in detention, the police refused to call a doctor or nurse, or to take her to the hospital. She lost the baby. As a result of an internal police investigation, departmental action was taken against 6 police personnel. Inspector Sujana Shrestha who was in charge of DPO at the time of the incident and was responsible for refusing to allow Rama Sris to be taken to the hospital, has reportedly gone on UN peacekeeping duties and no action has been taken against him.

It is worth noting that Advocacy Forum has only submitted a very limited number of complaints in this period, which clearly bears no relation to the thousands of complaints of torture and other ill-treatment that it has received during that period. This is because Advocacy Forum only approaches the Nepal Police Human Rights Cell with the consent of the victim and the large majority of victims are fearful to complain as they do not trust the independence of the investigation mechanism.

The Nepal Police Human Rights Cell 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 where the evidence clearly shows criminal responsibility for criminal prosecutions. Pending that, the National Human Rights Commission (NHRC) should step up its efforts to investigate reports of torture and other ill-treatment in police custody.

There have been no independent investigations into the allegations of systematic torture and disappearances in 2003/2004 by the Bhairabnath Battalion, which were documented in OHCHR's May 2006 report. OHCHR never received a detailed response from the Government. In December 2007, a site was identified where the body of one of the disappeared may have been cremated. A group of Finnish forensic experts visited the country in January 2008 and assisted local experts to exhume some of the remains. As of early November 2008, however, the results of the exhumations have not been made public.

In the Interim Constitution, the Office of the Attorney General is entrusted with the responsibility to investigate allegations of ill-treatment in custody or complaints that relatives or lawyers are barred from meeting detained persons. Article 136 (3) (c) specifies that the Attorney General has the power to:

on the basis of complaints or information received by him by any means, to investigate allegations of inhumane treatment of any person in custody, or that any such person was not allowed to meet his/her relatives directly in person or through legal practitioners, and give necessary directions under this Constitution to the relevant authorities to prevent the recurrence of such a situation.

The report of the Rayamajhi Commission set up in 2006 to investigate human rights violations, including excessive use of force during the April 2006 protests, was finally made public in August 2007. It recommended the prosecution of 31 members of the Nepalese Army, Nepal Police and Armed Police Force, largely in connection with killings which had occurred in the context of the protests, but no action has been taken to initiate prosecutions by the authorities. No-one has been prosecuted for the many cases of serious beatings which occurred in the context of the protests. At the time the report was put before Parliament in August 2007, the then Home Minister stated that the Government had already taken action against those responsible and that 'most recommendations' of the report had already been implemented and others had been forwarded to the competent authority for further investigation. The Attorney General has taken no action to prosecute as he believes that the evidence gathered is insufficient.¹⁷ This prompted the following comment in one of the leading English-language weeklies in Nepal:

[t]here is a certain déjà vu here that harks back to the way the Mallik Commission report let everyone off the hook after 1990.

¹⁷ 'Human Rights in Nepal one year after the Comprehensive Peace Agreement, Investigation Report, OHCHR, Nepal, December 2007, http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/1207CPA_Report_EN.pdf

In fact, the Mallik Commission became a metaphor of the business-as-usual insincerity of elected governments after 1990 that ultimately tarnished Nepali democracy. Once denied justice, people lost faith in the leaders they had helped propel to power. This erosion of public faith in politicians ultimately led to the collapse of Nepal's second experiment in constitutional monarchy.¹⁸

Recommendation (j): *Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted.*

As already stated above, those suspected of torture are not prosecuted or punished. In a few cases, police have been suspended briefly pending an internal inquiry.

Recommendation (k): *Victims of torture and ill-treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.*

In the 12-year history of the Torture Compensation Act (TCA), just over 200 victims of torture or their relatives have filed compensation cases with the courts. However, only 52 cases have been decided in favor of the victims, and in only seven cases was the money actually paid to the victim.¹⁹

In compensation awards under the TCA, the money has not always been disbursed to victims or their families.

As part of the peace process, the Government announced that reparations will be paid to victims of the conflict, including torture victims. CDOs are currently registering names of victims or their relatives. However, the criteria for determining who is eligible and how the measures will be implemented are not clear and concerns have been raised about the need for relief to be fairly and impartially distributed, and to respect the principle of non-discrimination.

Implementation of new provisions in the Interim Constitution of January 2007 and other legal provisions is disappointingly absent. The Special Rapporteur's recommendations relating to ratification of the Rome Statute of the International Criminal Court (recommendation (o)), the Optional Protocol to the Convention against Torture (recommendation (m)) and additional declarations in respect of Article 22 of the Convention (recommendation (l)) have not been implemented. This remains the case despite directions from the Interim Parliament to the Government to do so, as well as orders by the Supreme Court directing the Government to enact legislation to criminalize disappearances and torture.

¹⁸ Lal, C K (2007), 'From Mallik to Rayamajhi. History repeating itself as a farce', *Nepali Times*, Issue No. 361, 10 – 16 August 2007

¹⁹ Advocacy Forum, "Hope and Frustration. Assessing the Impact of Nepal's Torture Compensation Act-1996", June 26, 2008, page 1

CONCLUSION

Advocacy Forum, REDRESS and Human Rights Watch urge the Special Rapporteur on Torture to take the above information into consideration when reviewing the implementation of recommendations made after his mission to Nepal in 2005.

The organizations 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 criminalize torture, provide reparation to victims and put in place effective measures to prevent torture, including all those recommended by the Special Rapporteur.

5 November 2008