

# Torture of Juveniles in Nepal

## A Serious Challenge to Justice System



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# Torture of Juveniles in Nepal: A Serious Challenge to Justice System

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## Acknowledgement

AF has been at the forefront of adopting integrated intervention measures to reduce the prevailing practice of torture in Nepal by promoting system of accountability against torture since its establishment in 2001. Based on the idea that regular and unannounced visits to all places of detention are one of the most effective ways to prevent torture, AF has been visiting 65 government detention facilities on a regular basis in 20 districts in which it operates.

Besides, AF advocates for the application of international and regional standards prohibiting torture and effective implementation of and reforms on existing legislation on torture. It submits information, cases, reports to relevant international and national bodies like the UN Special Rapporteur on Torture, the UN Committee against torture, the UN Human Rights Committee, the UN Working Group on Arbitrary Detention, Amnesty International, OMCT, Association for Prevention of Torture (APT), Asian Human Rights Commission, Office of Attorney General, National Human Rights Commission and Human Rights Units of Nepal Police, Armed Police Force and Nepal Army. AF also lobbies for the Criminalization of

torture and provides legal, medical and psychosocial support to torture victims. Besides lobbying for the ratification of OP-CAT, we also work for the capacity building of judges, police, public prosecutors, defense lawyers and medical doctors and organize regular training on Istanbul protocol for them.

AF also works to promote the implementation of juvenile justice system. It aims at proactive intervention in the implementation of Juvenile Justice Procedure Regulation. Similarly, it also lobbies for the establishment of juvenile reform homes and monitors the illegal detention of children. Further, it provides legal aid to children and makes interventions to release them from illegal detention.

In this context, we have attempted to publish a report on the situation of juveniles in government detention facilities. In Nepal, the investigating authorities employ torture as the chief method of interrogation. Although the existing Nepali laws expressly prohibit torture on children coming into conflict with the law, AF's statistics shows that it is the children who bear the brunt of police atrocities in comparison to the adult detainees. The report aims to expose the discrepancy between laws relating to juveniles and its implementation in Nepal. Through this publication, AF calls the concerned authorities to work in unison to end the inhumane practice of torturing juveniles by implementation of the existing laws and amending them in line with the international standards.

We would like to extend our sincere thanks to Susan Carr, Amber Raut, Kopila Adhikari and O P Sen for conducting necessary research for this report. Special thanks to Susan Carr for drafting the report and Ingrid Massage for her brilliant editing job. I also like to appreciate our colleagues

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**Ram Prasad Ghimire**

Chairperson

Advocacy Forum



## **Executive summary**

Despite some improvement after the introduction in 2006 of the Juvenile Justice Regulations, juvenile detainees are still more frequently tortured than adults in Nepal. Particularly worrying is that the percentage of torture of juveniles reported in the southern Terai region is rapidly increasing. Eight of the nine districts with torture percentages above the national average are situated either in the Terai region or in bordering districts (Bardiya, Dhanusha, Jhapa, Kapilvastu, Morang, Rupandehi, Surkhet and Udayapur). This trend seems to parallel the political tensions and high levels of crime in those areas of Nepal. The district of Dhanusha has been consistently above the average level since at least April 2006. In the period from September to December 2009, the highest level of torture of juveniles was reported reaching a shocking 90% in this district.

It is estimated that between April 2009 and March 2010, 1 in 4 arrested juveniles were tortured by the police, in comparison to 1 in 6 adults. The widespread practice of arbitrary detention, torture and other ill-treatment of juveniles in police custody is a major concern. Juveniles are held for long periods in pre-trial detention in often inadequate conditions, in clear

breach of international human rights standards and Supreme Court rulings. Furthermore, their right to a fair trial is repeatedly violated.

Most children tortured or ill-treated by the police were arrested on suspicion of minor offences such as theft of small food items (such as a coconut), scrap metal (such as electric wire) and quarrelling with their friends. Many child detainees are from poor rural backgrounds whose families are, for a variety of reasons, unable to take care of, or provide for them. A number of the children are child labourers. Some had left their families to look for work in urban centres, often for very low pay. A minority of the children were detained on serious charges, including rape of very young girls, armed robbery, murder and membership of armed political groups. Public offence, theft and prostitution are the three most common charges against girls.

Over 90% of detained juveniles known to Advocacy Forum are male, and they report a higher torture percentage (23.1%) than female (10%).<sup>1</sup> Their age groups range from 7 to 17 years old. Certain ethnic or caste groups have been consistently found to face a greater risk of torture in detention. The Terai ethnic groups, Dalits and indigenous groups report the highest levels of torture. These groups reported torture levels well above the average level (34.1%, 24.8% and 22.4% respectively as compared to 22.3%, the level of torture reported in 20 districts monitored by Advocacy Forum in the same period).

Nepal ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1991. It has, however, been very slow in implementing its provisions into national law and policies. After many years, the Interim Constitution of Nepal (promulgated in

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<sup>1</sup> Data collected by Advocacy Forum between April 2009 and March 2010.

January 2007) finally established torture as a criminal offence, but to date no bill providing criminal penalties for torture has been passed by the legislature. Therefore, torture functionally remains only a civil offence. Nepal has reasonably well developed legislation on juvenile justice, which includes a prohibition of “torture or cruel treatment” of children.<sup>2</sup> The Children’s Act specifically allows for scolding and minor beating by relatives or guardians where it is “in the interest of the child”. The punishment for torture or cruel treatment set out in the Children’s Act is one year’s imprisonment and/or a fine of up to NRs. 5,000.<sup>3</sup> The perpetrator may also be “made liable to pay a reasonable amount of compensation to the child” but the Act does not specify the minimum or maximum amount.<sup>4</sup> The Children’s Act does not refer to torture or cruel treatment by agents of the state, and is rather intended primarily to deal with situations of child abuse carried out by parents or teachers. Article 15 of the Children’s Act prohibits the “imposition of rigorous punishment”, stating that “[n]otwithstanding anything contained in the existing laws, no Child shall be subjected to handcuffs and fetters, solitary confinement or be committed to live together in prison with prisoners having attained the age of majority in case a Child is convicted for any offence.”<sup>5</sup> The Supreme Court of Nepal has on more than one occasion directed state authorities to build child rehabilitation homes, and also ordered that children should not be kept in police custody.<sup>6</sup> In addition to the Children’s Act, the Juvenile Justice Regulations were introduced in 2006 with the specific aim to put into

<sup>2</sup> Children’s Act May 1992, Article 7. Full text of the Act available at [http://www.ccwb.gov.np/userfiles/file/Children%20Act%20t\\_2048.pdf](http://www.ccwb.gov.np/userfiles/file/Children%20Act%20t_2048.pdf)

<sup>3</sup> Children’s Act May 1992, Article 53 (3).

<sup>4</sup> Children’s Act May 1992, Article 53 (3).

<sup>5</sup> Children’s Act May 1992, Article 15.

practice the provisions of the Children's Act. The regulations have contributed considerably to increase the responsiveness of the judiciary and other actors of the criminal justice system who are more positively engaging with the issues highlighted in this report, contributing to the gradual reduction of detention as well as torture of juveniles. However, implementation gaps remain the major challenge. Much of the necessary infrastructure, whether within the police, the courts or in terms of rehabilitation homes still has to properly be put into place across the country.

There also remain some gaps between the Nepali standards and the emerging consensus in international law. For instance, according to Nepali law a child is “a minor not having attained the age of 16”.<sup>7</sup> This is out of line with an emerging consensus in international law that a child is anyone under the age of 18.<sup>8</sup> The UN Rules for the Protection of Juveniles Deprived of their Liberty define a child as “every person under the age of 18.”<sup>9</sup> The Convention on the Rights of the Child (CRC, ratified by Nepal in 1990) defines a child as anyone less than 18 “unless majority is attained earlier under national law.”<sup>10</sup> There is also a principle of international law that States should establish a minimum age for criminal responsibility (MACR).<sup>11</sup> There is an understanding that this should not be set too low.<sup>12</sup> The Committee on the Rights of the Child (the body of experts monitoring implementation of the CRC) considers that a MACR set below 12 years of age is not acceptable.<sup>13</sup> However, in Nepal, it stands at 10 years.

<sup>6</sup> Children's Act May 1992, Article 42 (2) and implied reading of Supreme Court Cases.

<sup>7</sup> Children's Act May 1992, Article 2.

<sup>8</sup> Amnesty International, Fair Trial Manual, Para 27.2.

<sup>9</sup> UNGA, 'UN Rules for the Protection of Juveniles Deprived of their Liberty' (14 December 1990), UN Doc A/RES/45/113, Rule 11(a).

<sup>10</sup> CRC, Article 1.

<sup>11</sup> CRC, Article 40(3)(a).

## **Recommendations:**

In light of the findings set out in this report, Advocacy Forum calls on all government institutions to implement fully existing Nepali law in so far that it is in line with international standards on detained juveniles, ensure an end to torture and other ill-treatment of juveniles, and to abide by the rulings of the Supreme Court and implement all outstanding recommendations of relevant international bodies, such as the Committee on the Rights of the Child and the Special Rapporteur on Torture.<sup>14</sup> Advocacy Forum further calls on all NGOs and INGOs working with juveniles coming into conflict with the law to step up their monitoring, and increase the pressure on governmental institutions.

### *A. Recommendations relating to torture and arbitrary detention and unfair trial of juveniles:*

- 1- All reports of torture of juveniles need to be independently investigated and those responsible brought to justice.
- 2- Juveniles should, as much as possible, be kept in parental custody, and guidelines should be issued to ensure the placement of juveniles in child rehabilitation homes is practiced as an exceptional measure. At no time should juveniles be detained with adults, unless it is in their best interest.
- 3- The authorities should ensure that juveniles coming into conflict with the law are questioned in a child friendly environment, preferably in

<sup>12</sup> UNGA, 'UN Standard Minimum Rules for the Administration of Juvenile Justice' ('The Beijing Rules') 29 November 1985 UN Doc A/RES/40/33 Rule 4.

<sup>13</sup> Para 32, CRC/C/GC/10.

<sup>14</sup> CRC Nepal 2005, Nowak 2009.

the presence of their parent(s) or guardian, in line with Rule 5 of the Juvenile Justice Regulations of 2006.

- 4- The legal definition of a child should be changed from anyone under 16 to anyone under 18 and the minimum age of criminal responsibility should be increased from 10 to at least 12 years old.
- 5- The government should, within one year at the latest, implement the judgments of the Supreme Court requiring the creation of more child rehabilitation homes.
- 6- The government should allocate resources to create other necessary infrastructure, such as separate units in the police specialising in juveniles and training to mitigate existing gaps between law and practice.
- 7- Introduce an advanced official system of age verification testing, and train doctors to ensure it is applied consistently across the country.
- 8- Review all legal and judicial procedures (including the powers given to Chief District Officers) to ensure juveniles are guaranteed the right to fair trial.

***B. Recommendations relating to torture in general:***

- 9- Introduce comprehensive legislation to criminalize torture as a matter of priority.
- 10- Put in place an effective and impartial mechanism for the prevention and investigation of torture.
- 11- Immediately sign and ratify the Optional Protocol to the Convention against Torture, putting in place a mechanism for independent monitoring of all places of detention.

## Introduction

### 1.1. Advocacy Forum's work on juvenile justice

Nepal ratified the Convention on the Rights of the Child in 1992 without any reservation. This, however, did not stop the rights of children from being gravely violated during the period of the internal armed conflict from 1996 to 2006. The National Human Rights Commission estimated that more than 500 children were killed during the conflict. The use of children as combatants was pervasive, thousands were left injured and orphaned, hundreds raped and subjected to other forms of sexual and physical violence by both parties in the conflict. An estimated 20,000 children were displaced due to the conflict.

Sadly, incidents of child rights violations have not stopped since the restoration of democracy in 2006. Advocacy Forum regularly monitors child right violations including the lasting effect of the armed conflict on children. It also works to promote the implementation of a professional juvenile justice system. It proactively intervenes in the implementation of the Juvenile Justice (Procedures) Regulations of

2006 and promotes accountability on the case of use of children in armed forces both nationally and internationally.

It measures and monitors the status of children, including education, civil rights and special protection measures. Similarly, it also lobbies for the establishment of child rehabilitation homes and monitors the illegal detention of children. Further, it provides legal aid to children and makes interventions to release them from illegal detention. It is in the context of this work that Advocacy Forum has identified the concerns summarized in this report.

## 1.2. Methodology

Advocacy Forum has been visiting government detention facilities of Nepal since its establishment in 2001. In the period from April 2009 to March 2010, it regularly visited 67 detention facilities in 20 districts across the country. Of the 957 juveniles interviewed in detention during this period, 213 (22.3%) reported torture or other ill-treatment at the time of arrest and/or during detention.<sup>1</sup> Furthermore, Advocacy Forum recorded that approximately 99% of juvenile detainees were detained in adult facilities, against international standards and Supreme Court directives.

The data and specific case studies contained in this report arise from the original interviews conducted in the 67 detention facilities by Advocacy Forum staff. Advocacy Forum provides legal assistance to many of the victims in these cases and has continued to monitor cases, visit police stations and courts, review files, and conduct interviews with victims and their families. Lawyers and staff based in the respective districts have met with

<sup>1</sup> See table a) in Annex A.

## *Introduction*

the victims many times. They conducted dozens of interviews with families in Baglung, Banke, Bardiya, Dhading, Dhanusha, Dolakha, Jhapa, Kanchanpur, Kaski, Kathmandu, Kavre, Lalitpur, Morang, Myagdi, Parbat, Ramechap, Rupandehi, Saptari, Sunsari, Surkhet and Udayapur districts. Interviews were conducted with the full consent of the interviewees and as far as possible in private. Where possible, the consent of parents or guardians were obtained to use the materials in this report. In any event, the identity of the children concerned has been protected through the use of pseudonyms and the deletion of details that may identify them. Interviewees were informed of the purpose of the interviews and provided information on a voluntary basis. At no time did the interviewers offer or promise compensation.



## PART TWO

### Analysis of patterns of torture of juveniles

#### 2.1. Analysis of patterns from April 2009 to March 2010

From April 2009 to March 2010, Advocacy Forum visited 957 juveniles in detention. Of these, 213 (22.3%) claimed that they had been tortured or subjected to other ill-treatment during their arrest and/or detention. During this same period, the overall level of torture for all detainees - adults and juveniles - in the 20 districts where Advocacy Forum conducted visits was 17.5%.

#### *Age group*

During the period under consideration, there were 4 detainees under the age of 9, 86 aged between 9 and 12, 450 between 13 and 15 and 417 aged 16 to 17. According to the data collected, 10% of the detained female juveniles and 23.1 % of the detained male juveniles reported torture or other ill-treatment.

### *Caste and ethnic background*

The caste groups with the highest percentage of juvenile detainees are the Brahmin and Chhetri groups, who represent 32.7% of the juvenile detention population. However they also report the lowest levels of torture (16.9%). Juveniles belonging to Terai ethnic groups represent 12.8% of the detained population; however 34.1% of them reported that they were tortured. The second highest percentage of torture reported was among the Dalit group who make out 24.8% of the juveniles who claimed they were tortured as compared to 13.9% of the juvenile detainees. Juveniles belonging to indigenous groups (22.4%) are also reported to be frequently tortured.<sup>1</sup>

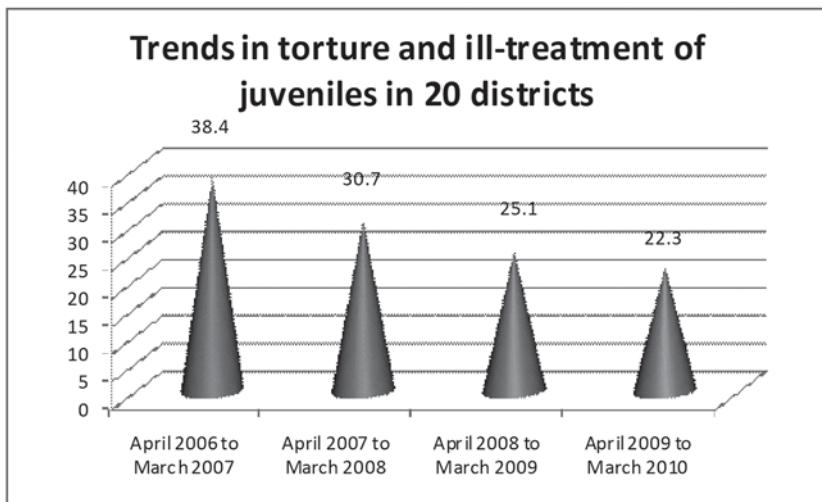
### *Trends since 2006*

Although these figures are shocking, they actually represent a step forward for Nepal. Indeed there has been a gradual decrease in the numbers of torture cases reported over the last year. From April 2006 to March 2007, 38.4% of juvenile detainees reported torture or other ill-treatment. From 2007 to 2008, 30.7% reported torture or ill-treatment. By April 2008 to March 2009, the reported level of torture and ill-treatment reported by juvenile detainees was down to 25.1%. Similarly, there have been some improvements in police adhering to safeguards set out in law. For instance, whereas 97% were not provided with a notice of their arrest during 2008-2009, this improved to 58.3% in 2009-2010.<sup>2</sup> The fact that these numbers have improved in the past year is encouraging. It seems to indicate a heightened awareness by government officials of the rights of juvenile detainees as well as a

<sup>1</sup> See table c) in Annex A.

<sup>2</sup> All periods referred to run from April to March unless otherwise specified.

willingness to implement them, particularly in the 20 districts where Advocacy Forum undertakes regular visits to places of detention and initiates discussions with relevant stakeholders to try and prevent and reduce incidents of torture and other ill-treatment.



However, the fact to be taken into account is that the present report is based on information gathered from juveniles encountered by AF attorneys during their regular custody visits. Most of police officials deployed at detention centers prevent AF lawyers from interviewing all the detainees in a detention facility. This is particularly endemic with regard to those detainees who are yet to be remanded in custody. These are the detainees who are most vulnerable to torture and illegal detention. Therefore, the data presented in the report should not be taken as an indicator for the gradual reduction of torture in detention.

### *District-level trends*

This overall improvement is welcome and is reinforced at the district level by indications that in certain districts juveniles are no longer being tortured. Advocacy Forum has found that in 3 of the 20 districts visited during this period, no cases of torture of juveniles were reported: Baglung, Siraha and Sunsari.<sup>3</sup>

However, there remain major concerns that in some districts, despite intense efforts, the level of torture remains consistently high, and that it has indeed been increasing, despite the efforts of Advocacy Forum. This is particularly so in Dhanusha District where the percentage of juveniles in detention claiming they were tortured has of late consistently been above the national average. From 2006 to 2007, 29.7% of juvenile detainees reported torture or ill-treatment. The following year this increased to 33.3%. In 2008 to 2009, it increased once again to 35.5%. From 2009 to 2010 the reported percentage of torture cases increased by 19.3 percent to 54.8%. Similarly, in Morang, Udayapur and Kapilbastu, the torture levels increased respectively from 26.2% to 43.5%, from 20% to 30% and from 11.1% to 25% for these same time periods. All of these districts are situated in the Terai region.

In the following 9 districts the level of torture reported was above the national average of 22.3%: Dhanusha with 54.8%; Morang, 43.5%; Surkhet, 38.9%; Jhapa, 35.4%, Udhayapur, 30%; Myagdi and Rupandehi both reported 28.6%; Bardiya 28% and Kapilbastu 25%.

<sup>3</sup> These figures may have been distorted by the fact that Advocacy Forum was unable to carry out frequent visits to detention facilities in Siraha and Sunsari, so reported levels may be less accurate than in other districts.

## ***Perpetrators***

Since the end of the armed conflict, torture and other ill-treatment are most commonly reported to have been carried out by the police. Members of the Armed Police Force (APF) who are especially active in the Terai region, customs officers and officials of the Forestry Department<sup>4</sup> are also implicated from time to time. Members of the Young Communist League<sup>5</sup> and similar youth organizations set up by other political parties also regularly carry out criminal acts amounting to torture. A number of armed groups operating in the Terai region such as 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 have also been reported to abduct, torture and ill-treat people.<sup>6</sup> Some of their victims have been very young.

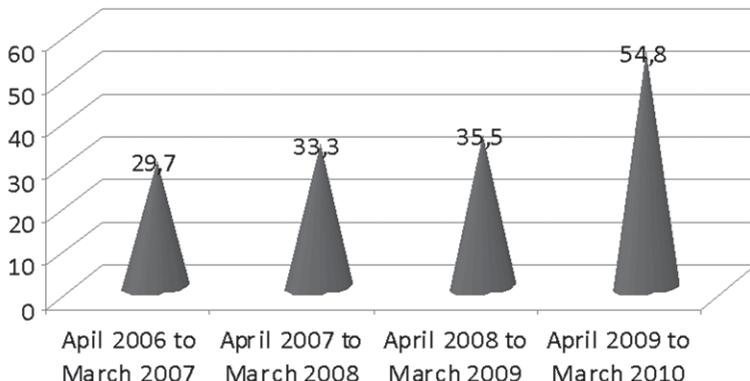
<sup>4</sup> Officials of the Forestry Department have powers to arrest and investigate in national parks.

<sup>5</sup> YCL, the youth wing of the Communist Party of Nepal- Maoist.

<sup>6</sup> The status of the YCL under international law is under discussion. Throughout the time the UCPN-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, between August 2008 and May 2009, when the UCPN-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. Although aware of sometimes severe acts amounting to torture committed by these groups this report focuses on the acts committed by the official security forces in Nepal.

## Trends in torture and ill-treatment in Dhanusha district



The APF has become increasingly involved in arrests related to armed groups in the Terai region.<sup>7</sup> The APF does not have clear legal powers to arrest and detain. However, in the context of ongoing criminal and political activity by armed groups in the Terai region, its forces have been deployed alongside the Nepal Police. There have been some reports of illegal detention by the APF.<sup>8</sup> Advocacy Forum has received allegations of torture at the Hathlewa and Mujeliya APF camp in Dhanusha District as well as at the Pathibara Gan APF camp in Padagaji, Jhapa district.<sup>9</sup>

<sup>7</sup> See case of Ramesh Aryal 17-year-old, detained and tortured by APF, below.

<sup>8</sup> Review of the Implementation of Recommendations made by the Special Rapporteur on Torture, Manfred Nowak, after his Mission to Nepal in 2005, Association for the Prevention of Torture, Advocacy Forum, Redress, September 2009.

<sup>9</sup> *Torture and Extrajudicial executions amid Widespread Violence in the Terai*, Advocacy Forum, January 2010, p. 31.

During 2009, the Government set out to implement a Special Security Plan (SSP). The exact details of this plan have remained undisclosed; however it is aimed at reducing crime and obstructions of highways in the Terai and has lead to the deployment of an increased number of Nepal Police and APF personnel.<sup>10</sup> Advocacy Forum is concerned that the apparent increase in torture and other ill-treatment of juveniles in many Terai districts may be connected to the introduction of the SSP.

It has to be stressed that given the long-term consistency with which these patterns have emerged, Advocacy Forum is confident that its findings in the 20 districts concerned provide a fair representation of the prevailing reality relating to torture in Nepal generally. However, in the absence of a nationwide monitoring mechanism, these figures cannot be determinative, but simply suggestive, of any nationwide figures.

## **2.2. Methods of torture**

On the basis of an analysis of the cases in the period from April 2009 to March 2010, the following methods of torture were found to have been most frequently used on juveniles:

- 1- Striking on various parts of the body with sticks (cane/bamboo), plastic pipes or rifle butts, including on thighs, hips, shoulder, back and head

<sup>10</sup> UN Security Council, Report of the Secretary General on the Request of Nepal for UN assistance in support of its peace process, S/2010/17, January 7, 2010, para. 17.

- 2- Slapping in the face, sometimes with both hands simultaneously
- 3- Kicking and punching on various parts of the body, including on back, chest, abdomen, and face
- 4- Squeezing fingernails with a pair of pliers
- 5- Death threats
- 6- Threats to chop off limbs
- 7- Tying together hands and legs, inserting a stick between the tied limbs, and then using the stick to hang detainees upside down. They would then be beaten in this position.
- 8- Beating on the soles of feet with sticks or plastic pipes
- 9- Making the detainee run and jump after being hit on the soles of the feet

In addition, there are concerns regarding the use of instruments of restraint, in particular handcuffs, in violation of national and international standards. Section 15 of the Children's Act states: "Notwithstanding anything contained in the existing laws, no child shall be subjected to handcuffs and fetters." The Supreme Court has also ordered that children must not be handcuffed while being taken to court.<sup>11</sup> This ruling and legislation are in line with international standards on child detention, as set out in Rule 64 of the The

<sup>11</sup> Bal Krishna Mainali vs. Home Ministry 2056, Writ no. 3505, Decision 7 August 2001.

United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), which states: “[I]nstruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time.”<sup>12</sup> However, this rule is not uniformly complied with.

Advocacy Forum lawyers regularly observe juveniles being produced in court in handcuffs. Below is the testimony of a 17-year-old boy who was taken in handcuffs to the District Administrative Office to appear before the Chief District Officer.<sup>13</sup> He was also detained with adults.

<sup>12</sup> Rule 64 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, UN document: A/RES/40/33.

<sup>13</sup> The Chief District Officer (CDO) is the highest administrative authority at the district level. He or she also functions as quasi-judicial body with considerable powers to detain, try and sentence people. CDOs are normally based at District Administrative Offices (DAOs).

### **‘Om Prakash’**

Om Prakash was 17-years-old at the time of arrest in December 2008. He is a manual labourer who had studied up to class 5. He is resident of Indrapur, Banke district.

In an interview with Advocacy Forum, he recalls his arrest as follows: “I was arrested while having tea near the Shiva temple by S.I. [name withheld] at 7 am in the morning on 31 December 2008 on the allegation of smashing the lock fastened on the Area Police Office Khajurakhurd on 30 December 2008. My hands were tied with a cloth; I was loaded in a van and then taken to the Area Police Office, Khajurakhurd. I was detained there from 8 am in the morning till 4 pm in the evening and at about 5 pm, I was handed over to the District Police Office (DPO) Banke. I was also taken to the Bheri Hospital for an ordinary health check-up, the same day.

I was tortured after being taken to the Area Police Office by two police officers including S.I. [name withheld] at about 10-11 am. The S.I. laid me down on a table and then tied both my legs with a cloth, telling me to confess that I broke the padlock while two other police officers held me tight and one beat me on the soles of my feet, thighs, knees and shoulders with an approximately 1 inch thick and 1 meter long cane stick for about one hour. Due to the torture, my nose was bleeding. I suffered from pain in my whole body for about 5-6 days. When I didn’t confess that I broke the padlock even after the torture, they threatened me with filing another case of stealing wire against me. They collected some telephone wires and cut the ends so as

to show that I had stolen them recently. Then I was handed over, along with those wires, to the DPO Banke. I was charged with theft.”

The victim said that he was not tortured after being detained at the District Police Office. He said that he was handcuffed while being taken to the District Administration Office Banke for remand. He was remanded for 10 days on 1 January 2009. On 22 January 2009 the District Court, Banke ordered his release on bail amount NRs32.000. He was released 5 days later after paying the bail amount. The case is running.

Furthermore, when two juveniles are arrested at the same time, they are routinely handcuffed to one another.

### **‘Dilli’**

Dilli was 13-years-old at the time of arrest in March 2009. He is a permanent resident of Solu VDC, Ramechhap district.

He provided the following details: ‘I am living with my relatives at Manthali, headquarter of Ramechhap district to pursue my study. I am studying in grade 5. On 16 March 2009, villagers caught me, accusing me of robbing a shop. They asked many questions regarding the robbery. I pleaded with the villagers that I was innocent but someone called the police. Four policemen came from Ramechhap Bazaar. They took me and [another boy] implicated in the robbery to the Ramechhap police post. On the way, they ordered my father

to go ahead. They handcuffed my left and [the other boy]’s right hands together. At around 12 pm we reached Bhotetar where they made us do frog jumps 8 to 10 times with our hands handcuffed and beat us three times with a stick of Lakuri, a type of tree branch, on our bottoms. In the evening, at around 4.30 pm we reached the Ramechhap Bazaar police post, old headquarters of Ramechhap that guards the Ramechhap jail too. They took us to an old house near the jail and an ASI started to beat us asking questions about the robbery. He would beat us whenever we denied the charge. He slapped us 10 to 12 times on our cheeks. Then we couldn’t hear anything and our eyes were dazed.

He locked us in the room. My father had managed to provide food and bedding for us. Next morning they made us clean the whole police post. At around 12 pm there was a meeting between my father, the person accusing us, and policemen. The policemen took us to the house where they had kept us overnight and started to torture us one after the other. There came a Madhesi policeman who beat us whenever we denied the charge. So, at last, to stop the torture, we confessed to the theft even though we were innocent. They beat us 10 to 12 times with sticks. One policeman slapped me with both hands on my cheeks at the same time. It hurt so much that I couldn’t see anything for some time.”

Other forms of ill-treatment regularly meted out on juveniles are forced labour, abusive language and insults or making juveniles take part in humiliating behaviour. Such actions are prohibited by international law: “Every child deprived of liberty shall be treated with humanity and respect

for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.”<sup>14</sup> However many cases of forced labour and ill-treatment continue to be reported. These include juveniles being forced to wash dishes and clothes, cut the grass with scissors, chopping and carrying wood, slicing vegetables, sieving rice, cleaning the premises of the police station, cleaning sewage drains, etc. In addition, juveniles have reported being spat on, being refused access to the toilets and being insulted.

### **‘Rajendra’**

Rajendra was 13-years-old at the time of arrest. He is a sixth grade student from Birendranagar, Surkhet District. He was arrested on 24 May 2009 in connection with a knife fight at his school.

According to a statement provided by the victim on 19 July 2009, the following happened: “While being taken to the Banke DPO, 2-3 unidentified policemen beat me inside the police van with a bamboo stick. They also kicked me one by one for about 3-4 minutes. They also kicked me on my face 2-3 times and scolded me using abusive language. After reaching Banke DPO, I was kept inside the detention room along with the adult detainees. At around 5.30 pm the same day, 3-4 unidentified policemen took me to the guard commander’s room. After making me sit on the floor, they beat me with their batons on both my thighs and kicked me on my back, interrogating me about the knives and the other friends involved in the fight. The

<sup>14</sup> Article 37 (c) Convention on the Rights of the Child.

torture along with interrogation lasted for about 15 minutes, and then I was kept inside the detention room. On the next morning, I was forced to work in the DPO from 7.30 am to 9 am. I was made to collect the branches of a fallen tree, to carry the wood to the kitchen, and wash dishes.”

The victim was remanded under the Public Offences Act on 25 May 2009. He was released on bail on 21 June 2009.

## Concerns from national and international community

The high incidence of torture and other ill-treatment of detained juveniles has been drawing increased attention and concern over the past five years or so. There have been attempts by national and international NGOs and UN mechanisms to engage the government of Nepal in a constructive dialogue on reform of the juvenile justice system, and on torture and other ill-treatment of juveniles by the security forces. While the government has failed to respond to these allegations, at the same time it has taken some initiatives that have gone some way to improve the situation, as demonstrated by the decline in reports of torture and other ill-treatment of juveniles in detention since the end of the armed conflict. Most noticeable among these initiatives is the formulation in 2006 of the Juvenile Justice Regulations which aim to implement the provisions of the Children's Act of 1992.

Most recently the UN's Special Rapporteur on Torture in his report to the Human Rights Council's thirteenth session included details of 15 juveniles tortured whilst in detention in Nepal. The ages of the

victims ranged from 13-years-old to 17-years-old.<sup>1</sup> The government of Nepal as of 25 February 2010 when the report was submitted had failed to respond to these allegations. To the knowledge of Advocacy Forum, as of June 2010, the government has still not responded and no investigations have been initiated at the national level into these cases.

This is the most recent example of ongoing attempts by the UN to engage the government in a constructive dialogue on the issue of juvenile justice and the prevalence of torture of juveniles in detention. In 2005, the Committee on the Rights of Child in its Concluding Observations after considering Nepal's second periodic report<sup>2</sup> expressed concern that "the minimum age of criminal responsibility is set as young as 10, and that there is no official system of age verification in place. The Committee is also concerned about conditions of detention, and that persons under 18 are in most cases not separated from adults while in detention due to lack of juvenile detention facilities. The Committee is also alarmed that children are often brought to trial "without any proper investigation". Furthermore, a large proportion of juvenile cases are dealt with by District Administration Offices, which are quasi-judicial. The Committee is also concerned at the lack of educational facilities in prisons.<sup>3</sup>

<sup>1</sup> Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak Addendum, Summary of information, including individual cases, transmitted to governments and replies received, 25 February 2010, A.HRC.13.39.Add.1 para. 200.

<sup>2</sup> Report submitted in accordance with article 44 of the CRC.

<sup>3</sup> CRC/C/15/Add.261, para. 97.

The CRC recommended that “the State party review its legislation and policies to ensure the full implementation of juvenile justice standards [...] in particular to (a) ensure that detained persons below 18 years are always separated from adults, and that deprivation of liberty is used only as a last resort, for the shortest appropriate time and in appropriate conditions; (b) expedite the construction of separate facilities (child correction centre) and separate cells in detention facilities for persons below 18 to ensure that they exist in all districts; (c) in cases where deprivation of liberty is unavoidable and used in last resort, for the shortest appropriate time, improve procedures of arrest and conditions of detention and establish special units within the police for the handling of cases of children in conflict with the law; (d) ensure that persons under 18 years are not held accountable, detained or prosecuted under anti-terrorism laws; (e) review, and where necessary amend, all (judicial, legal and protection) procedures, including those of District Administrative Offices, so as to ensure that all persons under 18 years who are alleged as, or been accused of, breaking the law are fully guaranteed the right to a fair trial provided for by article 40 (2) of the Convention; (f) provide formal training for judicial professionals on juvenile justice administration and human rights”.<sup>4</sup>

In 2008, Human Rights Watch (HRW) issued a press release calling for government action to stop the abuse of juveniles by police. In one year HRW had documented what they termed “more the 200 credible claims of torture or abuse committed by the Nepal Police Force against boys and girls some as young as 13.”<sup>5</sup> According to this press release,

<sup>4</sup> CRC/C/15/Add.261, para. 99

<sup>5</sup> Human Rights Watch Nepal: End Torture of Children in Police Custody, 18 November 2008.

and in accordance with Advocacy Forum's own research and data collection (see above), the children abused by the police are most often suspected to be petty criminals and street children. HRW also expressed its surprise that not a single police officer had been prosecuted under Article 7 of the Children's Act: "Given the widespread and credible nature of the allegations of torture in police custody, and the fact that the Children's Act allows the government to prosecute torturers of children, it is also surprising that not a single police officer has been prosecuted for this offense."<sup>6</sup> The government of Nepal's only reaction to this press release was to deny the allegations. To Advocacy Forum's knowledge, no investigations into the cases HRW submitted were carried out. There are significant systemic problems relating to the state's response to allegations of torture. Existing mechanisms, including the Nepal Police Human Rights Unit and the Attorney General's Unit have been largely ineffective, due to their weak mandate and lack of independence and impartiality.

Various efforts have been made at the national level by local NGOs to encourage the implementation of existing norms of protection. On 10 September 2008, Advocacy Forum registered a Public Interest Litigation petition in the Supreme Court, on behalf of Suresh B.K. and others, all of whom were juveniles. These children were removed, or were at risk of being removed, from a rehabilitation home on the grounds that the home had insufficient space and were placed, or at imminent risk of being placed, in a police facility where they were detained among adults. On 29 September 2008, the Supreme Court

<sup>6</sup> Human Rights Watch Nepal: End Torture of Children in Police Custody, 18 November 2008.

explicitly prohibited child rehabilitation homes for returning children to police custody. The court also ordered that government agencies improve infrastructure and establish more rehabilitation homes in other regions.<sup>7</sup> On 15 February 2009, a similar petition was filed on behalf of eleven juveniles detained in six different police facilities in Kathmandu and Lalitpur Districts. On 8 March 2009, the Supreme Court once again ordered the government to create more child rehabilitation homes in Nepal. However the government has taken a long time to act on these orders, though there have been reports that three new child rehabilitation homes are being established in Bhaktapur, Morang and Kaski districts.<sup>8</sup>

As stated by HRW, there have been no cases filed against perpetrators of torture under Article 7 of the Children's Act.<sup>9</sup> As will be seen below there are several reasons why this has not happened.

<sup>7</sup> The one child rehabilitation home in Nepal is in Lalitpur District.

<sup>8</sup> See <http://www.ekantipur.com/the-kathmandu-post/2010/05/30/nation/child-reform-centres-to-open/208853/>

<sup>9</sup> In one case, concerning a child in a school in Lalitpur district who had been forced by a teacher to stand for prolonged periods and whose hair was pulled, the Lalitpur District Court ruled that the child was inhumanely treated and ordered the teacher to pay NPR 5,000 as compensation to the child. Another case was withdrawn after the parents were pressurized by the school in question.



## Legal, policy and administrative issues

In this chapter, we will summarize legislative, policy and administrative issues relating to torture generally and torture of juveniles more specifically. The general issues have been discussed in more detail in several previous Advocacy Forum publications and are included here in a fairly cursory manner.<sup>1</sup> Most attention is given to the specific obstacles to the effective prevention, investigation and prosecution of perpetrators of torture and other ill-treatment of juveniles.

In addition to facing a high risk of torture, the human rights of juvenile detainees in Nepal are repeatedly violated as they are detained with adults, produced and tried before the same courts as adults and held to criminal liability disproportionate to their age. They also face ill-treatment and forced labour. Several of these violations in themselves directly contribute to, or facilitate, the high occurrence of torture and other ill-treatment.

<sup>1</sup> See especially the following two reports: “Hope and Frustration”, June 2008 and “Criminalize Torture”, June 2009.

#### 4.1. Lack of effective criminalization 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.

Article 26 (2) reads:

Any such action pursuant to clause 1 shall be punishable by law and any person so treated shall be compensated in accordance to the decision determined by law.

So, although the Interim Constitution established torture as a criminal offence, no bill providing criminal penalties for torture has been passed by the legislature. Therefore it is functionally still only a civil offence.<sup>2</sup> 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 public.

The entire existing legal system in Nepal fails to provide adequate avenues for torture survivors to seek justice and reparation and never holds perpetrators criminally accountable for their crimes.

Without legislation expressly defining the offence of torture, torturers can only be charged under the assault provisions of the *Muluki Ain* (Country Code). In practice, this rarely occurs, as there is no impartial mechanism for receiving and investigating complaints of torture and

<sup>2</sup> Advocacy Forum-Nepal, *Criminalize Torture* (2009), p. 3.

it is the police (in many cases the torturers themselves) to whom a complaint must be made. Under these circumstances, charges lodged against public officials are rarely investigated seriously.<sup>3</sup> Further, the *Muluki Ain*'s definition of "assault" does not account for the unique nature of torture, including the psychological impact of the offence.<sup>4</sup> As already indicated above, although the Children's Act also provides for punishment of one year and a fine for "torture or cruel treatment", this provision has rarely been enforced, and in any event refers to such acts by non-state actors.

After it ratified the Convention against Torture, Nepal made some amendments to its legal and constitutional framework. It defined the legal rights to be protected against torture as fundamental rights in the then Constitution, and promulgated the Torture Compensation Act (TCA) in 1996.

The TCA, which remains the sole domestic law exclusively relating to torture, only allows for (very limited) civil penalties<sup>5</sup> and does not criminalise torture. The shortcomings of the Act are numerous and have been documented in detail by Advocacy Forum in its 2008 report, *Hope and Frustration*.<sup>6</sup> The primary concern is that the statutory limitation under the TCA disqualifies any victim who does not file a

<sup>3</sup> See Advocacy Forum-Nepal and Human Rights Watch, *Waiting for Justice*, September 2008 and *Still Waiting for Justice*, October 2009, for a description of the lack of investigations and prosecutions relating to extrajudicial executions and enforced disappearances.

<sup>4</sup> See Advocacy Forum-Nepal, *Criminalize Torture* (2009), p. 16.

<sup>5</sup> The maximum amount of compensation that can be ordered is a mere NRS 100,000 (US \$1,300).

<sup>6</sup> Advocacy Forum-Nepal, *Hope and Frustration* (2008)

case within 35 days of the torture itself, or after release from detention. A provision imposing monetary penalties on those making groundless claims of torture also potentially deters victims from becoming involved with the judicial system.<sup>7</sup> In many cases the victims of torture or other ill-treatment are further deterred from filing cases as they fear reprisals from the police officers responsible for the torture. The Act does not provide for victim and witness protection, and there is no other law or policy in place in Nepal addressing protection of complainants. This is underlined by developments in several cases which had originally been submitted, but where victims later either withdrew the case or failed to attend the court due to threats received by the police officers identified as perpetrators, and who had remained in their posts.

In addition to providing Districts Courts with the authority to award a maximum NRs100.000- to the victim, the Act also empowers the courts to order the relevant governmental departments to initiate departmental action against the perpetrator. This power has been used rarely. Furthermore, as there is no clear reporting procedure, it is unclear whether in those cases where the courts did order such departmental action, whether the departments concerned acted on it and in which way.

There are also concerns about the limitation to the amount of compensation that can be awarded by the courts. Even in those cases where the medical costs to treat the resulting injuries and mental problems exceed the maximum amount of NRs100.000; it is not

<sup>7</sup> TCA, Article 6 (2).

possible for the courts to order the state to pay all the costs as well as provide compensation. In a writ filed in the Supreme Court arguing that the TCA is against provisions of Nepal's Treaty Act,<sup>8</sup> it was also argued that the TCA was in breach of Section 14 (1) of the Convention against Torture which states that victims will be provided with redress, including appropriate and adequate compensation.<sup>9</sup> The Supreme Court's Special Bench ruled that the amount of adequate compensation is dependent upon the nature and circumstances of each individual case, including the individual and society,<sup>10</sup> and upheld the NRs100.000 maximum limit. It is the belief of Advocacy Forum that this decision should be revised, as compensation for severe cases of torture remains inadequate.

Since no centralised documentation of cases filed under the TCA exists, it is difficult to make a comprehensive assessment of these cases. Nevertheless, an analysis of cases filed by Advocacy Forum since 2003 reveals considerable information about the Act, particularly in terms of judicial decisions passed. Advocacy Forum has filed 85 cases on behalf of victims under the TCA since 2003. Of these 81 cases, 27 (31.77%) have been dismissed; 17 complainants (20.0%) were granted

<sup>8</sup> Article 9(1) provides that when a law is not in line with international standards set out in treaties which Nepal has ratified, then the provisions of the treaty should prevail.

<sup>9</sup> According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the UN General Assembly in December 2005, this right includes the right to restitution; rehabilitation, compensation, satisfaction and guarantees of non-repetition.

<sup>10</sup> Jaya Pd. Poudel vs. HMG Council of Ministers of council NLR 2060 Decision No. 7222 p. 419.

compensation; four cases (4.70%) were withdrawn; and 37 (43.53%) remain active in the courts. Of the 17 cases in which compensation was granted, six victims received the minimum amount of compensation: just NRs 10,000 (US \$142). Only one case received the maximum amount, NRs 100,000 (US \$1420). Many of the victims have yet to receive the money, although the TCA provides that compensation should be handed over within 35 days of the court order being issued.<sup>11</sup>

Almost 50% of cases were filed in the Kathmandu District Court. The fact that less than one fifth of cases filed resulted in compensation being granted, and a meagre 3.7 % involved departmental action being ordered against perpetrators, clearly demonstrates the extent to which the TCA can be seen to perpetuate cycles of impunity and deny judicial remedy to the majority of victims.

#### **4.2. Lack of systematic monitoring of places of detention**

There is no nationwide mechanism to monitor places of detention in Nepal, though a number of bodies have powers to do so. Chiefly among them are the National Human Rights Commission (NHRC), the judiciary and the Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal). The NHRC has not been able to fulfil this role. Since the end of the conflict, the Commission does not appear to have prioritised this part of its mandate. The 2005 Memorandum of Understanding between the Government of Nepal and OHCHR provided the latter with unrestricted access to places of

<sup>11</sup> TCA (1996), Section 9(1).

detention. However, from January 2008, following a policy change, the Office no longer had a program of systematic detention visits. After the change in the renewed mandate of June 2010, the Office lost its right to visit places of detention without prior notification, adding further concern about the erosion of its monitoring role.

The role of the judiciary in monitoring the welfare of detainees and preventing illegal detention, torture and other ill-treatment is largely marginal. Under Section 18(4) of the Prison Act 1963, judges of the Appellate Courts have a duty to at least once a year inspect prisons situated within their territorial jurisdictions. If the judge finds someone detained or imprisoned for a period longer than the sentence imposed on him or her, or for a period longer than what the law allows, he or she can order the immediate release of such person. Appellate Court judges rarely carry out this duty. To Advocacy Forum’s knowledge, there is no equivalent duty on district court judges in relation to police stations, prisons or other places of detention situated in their districts.

#### **4.3. Lack of independent investigation mechanisms**

There are significant systemic problems relating to the state’s response to allegations of torture. A number of bodies set up to investigate reports of human rights violations (including torture) lack independence and impartiality and are largely ineffective. These include the Nepal Police Human Rights Unit (NP HR Unit), the Attorney General’s Unit (AG Unit) and the Armed Police Force Human Rights Unit (APF HR Unit). Even in those cases where these bodies make recommendations for “further action”, disciplinary action or for

compensation — however inadequate — to be granted, the authorities often do not act on these recommendations.

For instance, the NP HR Unit definition of “investigation” appears to comprise merely of sending a letter with details of the complaint provided by Advocacy Forum (or others) to the relevant District Police Office (DPO) and to ask that DPO to respond to the allegations. Advocacy Forum is not aware of any cases in which the NP HR Unit 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. According to information provided by the NP HR Unit in March 2010, the unit investigated 38 complaints during 2009, only one of which resulted in the dismissal of the police officer concerned.<sup>12</sup>

The punishments that have been imposed by the Nepal Police bear no relationship to the gravity of the offences committed. In the egregious case of torture in public of Bhakta Rai and Sushan Limbu at Urlabari Area Police Post (APO), Morang district in July 2009, the NP HR Unit summoned the officer in charge of the APO and other policemen allegedly involved in the torture and questioned them.<sup>13</sup> The

<sup>12</sup> Presentation by member of Nepal Police Human Rights Unit at a training seminar on medical-legal documentation of torture organised by Advocacy Forum and REDRESS, Kathmandu, March 2010.

<sup>13</sup> One member of the public recorded 15 minutes of this on a mobile phone. It is accessible at: [www.witness.org/nepal-torture](http://www.witness.org/nepal-torture). See also World Organisation against Torture, No Appropriate Sanctions Imposed on the Alleged Perpetrators of Torture and Other Ill-Treatment of Sushan Limbu and Bhakta Rai, <http://www.omct.org/index.php?id=&lang=eng&articleSet=&articleId=9010>

interrogation concluded that the policemen were responsible for torture. Subsequently, the NP HR Unit suggested to Police Headquarters, Legal Section to take departmental action against the guilty policemen. Accordingly, the Police Headquarters, Legal Section gave a warning to 1 Police Inspector (in charge), 1 head constable and 2 constables as a form of departmental action. It is of serious concerned that this “punishment” is not commensurate with the gravity of the allegations.

### **Dil Kumar Gyanmi Magar**

Dil Kumar Gyanmi Magar (real name) was 16 years old at the time his father, Dal Bahadur Gyanmi Magar, a permanent resident of Prungbung VDC-3, Jyamire village, Panchthar district was arrested at around 10 am on 12 February 2010 by a team of policemen under the command of ASI Firal Mohato from Prungbung Police Post. His father died in police custody, most likely as a result of torture. Dil Kumar was also arrested. He claims he was severely beaten by ASI Firal Mohato, Head Constable Indra Narayan Sha and Constable Ganga Maya and a group of villagers who forced him to confess to a theft. He was illegally detained till 21 February 2010.

#### Details of torture:

After the arrest he was taken to Prangbung police post along with other detainees [names withheld] and beaten severely by 5 policemen including ASI Mahato on his bottom, soles, shins

and other parts of his body for about one hour. Then he along with other detainees was taken out to the police office premise and ASI Mahato and some villagers beat them with bamboo sticks.

The following evening he was transferred to District Police Office, Panchthar along with the three other detainees and his father's dead body. On the way ASI Mahato said to him, "There at DPO, Panchthar, you should say that your father was an epileptic and that he died as a result of that disease. If you say so you will be released tomorrow." On 9 March 2010, Dil Kumar was released on bail.

Advocacy Forum submitted the case to the NP HR Unit on 11 March 2010 requesting protection of the victim/s and eye-witnesses, a thorough investigation of the case and legal action against the perpetrators but till the date no response has been received.

On 2 March 2010, Dil Kuùmar's eldest brother filed an FIR against 10 perpetrators including ASI Firal Mahato and other policemen. The District Court, Panchthar released the alleged perpetrators on 25 March 2010 on ordinary bail. The alleged perpetrators are still serving in the same police office.

#### **4.4. Lack of appropriate infrastructure**

According to the findings of Advocacy Forum's visits to detention facilities, approximately 99% of juvenile detainees are being held in

adult facilities. According to the Standard Minimum Rules for the Treatment of Prisoners (1955), “young prisoners shall be kept separate from adults.”<sup>14</sup> This is further set out in Article 37(c) of the CRC, and developed by the Committee on the Rights of the Child in its General Comment as follows: “Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly; the child’s best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child centred staff, personnel, policies and practices.”<sup>15</sup> The Beijing Rules further emphasise this by stating that “While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality”.<sup>16</sup>

<sup>14</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977)

<sup>15</sup> CRC/C/GC/10, para. 85.

<sup>16</sup> Rule 13.5 United Nations Standard Minimum Rules For the Administration of Juvenile Justice A/RES/40/33.

According to Section 42 (1) of the Nepal's Children's Act, the government "shall establish children's rehabilitation homes as required", and according to Section 42 (2), "The following children shall be kept in the Children's Rehabilitation Home established pursuant to sub-section (1): (a) Child to be detained pursuant to the existing law for the investigation or proceedings of the case being accused in any crime, (b) A Child to be imprisoned being punished pursuant to existing law."

Furthermore, Section 50(1) of the Act reads: "In case the officer hearing the case deems that it is not appropriate to keep the Child in detention in consideration to the physical condition, the age of the accused Child who is to be investigated and kept in detention pursuant to existing law, the situation at the time of offence and the place of detention, s/he may issue an order to hand over the Child to the custody of his father, mother, relatives or guardian or any social organisation involved in safeguarding the rights, and interests of the Child or the Children's Rehabilitation Home on the condition to present him as and when required and to carry on investigation or proceeding of the case."

As for serving sentences, Section 50 (2) states that "in case the officer hearing the case deems that it is not appropriate to keep the child in prison who has got a sentence of imprisonment being proved as an offender in consideration to his physical condition, age, or situation at the time of offence and repetition of offence etc., he may keep the case pending for not to undergo the punishment at once or may prescribe the duration of such prescribed punishment to be passed residing in a Children's Rehabilitation Home or remaining in the guardianship of any person or organisation. The officer hearing the

case may issue an order in the case of the Child whose punishment is suspended, if the Child is given a sentence of imprisonment being proved an offender of the same or any other offence during the period of one year, to implement the punishment at one time adding both the sentences of imprisonment.”

As already noted, there has been considerable judicial activism on the issue of juvenile detention. The Supreme Court has made several rulings, ordering the authorities to send children to child rehabilitation homes instead of detention centres.<sup>17</sup> Furthermore, the Children’s Act read in conjunction with a Supreme Court decision states that children should not be detained in police custody, even during police investigation.<sup>18</sup> In a very recent case, the Supreme Court has directed the Nepal Government to send a child to a child rehabilitation home and also ordered the government to provide updates every 6 months to the Supreme Court. Following a habeas corpus petition and a Public Interest Litigation filed by Advocacy Forum on behalf of Suresh B.K. and one other juvenile, the Supreme Court, on 29 September 2008, ordered the government to improve the physical infrastructures of the existing child rehabilitation home, to establish more rehabilitation homes in other regions, and prohibited child rehabilitation homes from returning children to police custody. The Supreme Court also ruled that the imprisonment of juveniles together with adults in prison was illegal and that Suresh B.K. should be released from illegal detention.<sup>19</sup>

<sup>17</sup> Ghimire and Dahal v. Nepal, Supreme Court judgment, 17 December 2007 and Bablu Godia v His Majesty’s Government, Supreme Court judgment, March 2009.

<sup>18</sup> Children’s Act May 1992, Article 42 (2) (a) and Aasis Adhikari vs. District Administration Office Banke, Supreme Court Judgment.

<sup>19</sup> Aasis Adhikari vs. District Administration office Banke, Supreme Court Judgment.

Despite the provisions of the Children's Act, Juvenile Justice Regulations and court orders not to detain children with adults, 99% of juvenile detainees in the 67 detention facilities visited by Advocacy Forum remain held with adults. There is only one child rehabilitation home in the country with the capacity to cater for 60 persons. As of March 2010, it was housing 84 children. Out of them 34 were charged with attempted rape, 26 with murder and the others with theft, drug abuse, robbery, human trafficking and smuggling weapons, among others. Forty six children had been sentenced and found guilty. The cases against the others were still pending.

However this one child rehabilitation home (situated in the Bhaktapur District) also lacks basic infrastructure. According to the children residing there, the quality of food is substandard and there is a lack of adequate bedding. Although there is a built-in school that offers elementary to secondary level education, Advocacy Forum found that there are only two teachers. There is also one legal counselor, one psychosocial counselor, one warden and one security guard. The Nepal government does not provide sufficient funds for the rehabilitation home so most of its activities are supported by non-governmental organizations. Some juveniles are mentally disturbed but are not provided with adequate treatment due to a lack of funds. Advocacy Forum has received letters from some juveniles seeking support for their medical treatment.

Overall, the services provided are insufficient and are not in line with the provisions set out in law. Advocacy Forum found that the inmates of the home frequently fight and injure themselves and abscond due to a lack of adequate security measures. Furthermore, the State has

contracted out the running of this rehabilitation home to a non-governmental organization. Though Section 44 of the Children's Act provides that the Central Children's Welfare Board and the District Children Welfare Boards will have the power to inspect privately run rehabilitation homes, in practice these boards lack the powers to investigate any reported irregularities and ensure their compliance with Nepali and international norms on the protection of juveniles in conflict with the law and the powers the boards do have are not used effectively.

It is also important to ensure that there are adequate rehabilitation centres in each district. This ensures relative proximity between the juvenile and his family or guardians, and facilitates visits. If a rehabilitation centre is too far from the child's parents, then they will in many cases be unable to travel to visit the child, thereby in practice depriving the child of his/her visiting rights and a protective measure against ill-treatment as the guardian will not be well informed about the detention conditions.

Creating juvenile rehabilitation homes in each district will also have the advantage of creating smaller facilities. If the juveniles residing in each facility are fewer in number this will allow for better rehabilitation and education programmes to be carried out as well as allowing for more individualised care. As it stands these programmes would be extremely difficult to implement in large overcrowded facilities.

There appears to be a lack of knowledge of the provisions set out in Section 50 of the Children's Act among the relevant authorities. For instance, police will sometimes act to protect child detainees from adult detainees, either by moving them into women's facilities, or

releasing them into the care of their guardians. However this often only occurs after lawyers have raised these issues in court and filed a case for the juveniles to be provided with adequate detention conditions, or released into the care of their guardians. Though the Children's Act set out that juveniles who have been arrested should be transferred to the custody of their guardians, or to a child rehabilitation home, the Juvenile Justice Regulations do not specify precisely how these provisions are to be implemented. Until directives and procedures have been more clearly established and disseminated widely to all stakeholders, children will continue to be detained with adults in violation of the Children's Act and Supreme Court directives.

When developing these procedures, it will be necessary to consider the circumstances of the majority of these juveniles. Many of them are street children. In these cases the option of parental 'custody' would not be a plausible option. The importance of establishing sufficient and adequate children's rehabilitation homes is therefore even more apparent.

Advocacy Forum has found that it is common practice for only those juveniles who are standing trial or have been sentenced to be transferred to the child rehabilitation home. Those still under investigation remain in pre-trial detention with adults. It has also been recorded by Advocacy Forum during its visits to the one functioning child rehabilitation facility that it caters primarily to those accused or found guilty of serious crimes. As seen above, 60 out the 84 juveniles in the child rehabilitation home were accused of or found guilty of rape or murder. However, the majority of juveniles are arrested on accusations of public offences and minor theft. There is no facility for these

juveniles. It would be inadequate to house them with other juveniles found guilty of murder. This could easily impede their rehabilitation process which should be the priority in such facilities. They should therefore be released into the custody of their parents or guardian, or in the case of street children, into the custody of another care institution.

### **'Ram Pokhrel'**

Ram Pokhrel was 12-years-old, and studying in 4th grade at the time of his arrest. He is from Patana VDC, Kapilvastu district.

The victim was arrested on 4 February 2009 by the Pipera police station after villagers detained him and phoned the police accusing him of using a fake bank note at a meat shop. He was detained at the Pipera Police Station for one night where he was beaten. On 5 February, he was taken to Gorusinghe Area Police Station and on 6 February he was remanded for 15 days by the district court, Kapilvastu.

The victim informed Advocacy Forum staff who visited him that at the Gorusinghe APO that he was held in a cell with adult suspects, including two murder suspects.

#### Statement of Chuda Bahadur Karki, Police Inspector, Gorusinghe Area Police Station:

"He was handed over to the police by local people on the accusation of using a fake bank note. We presented him in the

district court on 6 February 2009 and got him remanded for 15 days for further investigation. As the district court didn't specify any special procedures for juvenile detainees we put him in the detention centre according to the existing laws and rules."

Statement of Deputy Attorney General Shiv Shankar Chaudhary:

"I have heard 2 or 3 juvenile cases during my tenure in Rupandehi district court. There also the juvenile detainees are kept in the detention center. There is a provision for sending children to a Child Reform Centre but only if they are sentenced to a term in prison.

Action taken by Advocacy Forum:

Advocacy Forum representatives put forth that the children's rights are secured by the Children's Act, Section 11(2) and explained the Juvenile Justice (Procedural) Regulations, 2006. Police Inspector Chuda Bahadur Karki said that police had not followed the law due to ignorance and promised to keep the juvenile in a separate room and present them at the district court within 1 or 2 days. Deputy Attorney General Shiva Shankar Chaudhary said that, if possible, he will call the police inspector immediately to inform him about the provisions of Children Act and Rules and order him to keep the juvenile in "parental detention".

As the data collected by Advocacy Forum indicate, the percentage of reported torture in detention are decreasing, indicating a degree of success for the litigation initiated by lawyers, and general awareness programmes. This is encouraging for the future, and should be used as a motivational tool to develop more programmes.

Nepal's legal system fairly adequately covers the use of separate facilities for juveniles in conflict with the law. However the lack of implementation of these provisions and the lack of awareness among key actors means that 99% of juveniles remain at risk of torture and other human rights violations in adult detention facilities.

*Absence of investigation units and juvenile courts*

According to Nepali law, alleged illegal acts by juveniles should be investigated by a specially trained juvenile branch of the police, and trials should be carried out before a Juvenile Bench. Such a system was established by Section 55 of the Children's Act of 1992. The law reads as follows:

“Section 55 (1) The Government shall, by publishing a notification in the Nepal Gazette constitute juvenile court as required. The area and headquarter of such court shall be a prescribed in the same notice.

Section 55 (2) The Juvenile Court constituted pursuant to sub-section (1) shall have the power to hear and decide the case of first instance in which the Child is a plaintiff or defendant except in the situation of Section 20.

Provided that, the Juvenile Court shall not hear and decide the case in which a Child is involved along with an adult person.<sup>20</sup> In [] the Supreme Court ruled that in cases such as these the case must be considered by the Juvenile Bench.

As set out by the CRC, “[...] The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about the child’s, and particularly about the adolescent’s physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (...). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs.[...].”<sup>21</sup>

<sup>20</sup> This is a fairly common occurrence. For instance, in June 2010, Advocacy Forum was involved in the defence of 12 juveniles tried together with adults in Kathmandu District Court alone.

<sup>21</sup> CRC/C/GC/10 para. 40.

### **‘Ganga’**

Ganga was arrested from her home at 11 am on 22 February 2009 by a group of policemen from the Kohalpur Area Police Office, Banke District and brought to the Kohalpur Area Police Office on suspicion of involvement in a murder case.

Details of torture:

At the police station, a policewoman [name withheld] beat Ganga’s back, hip, thighs and hands three to four times with her stick accusing her of lying and imploring her to tell the truth about the murder. The stick broke during the beatings but the officer continued to beat Ganga with another one. Ganga was in pain the following day from the beatings and she said she developed dark bruises on her hands.

She was remanded for 5 days for the first time on 23 February and a second time on 28 February for 10 days. She obtained a private lawyer, and was subsequently released on bail by the Banke District Court. Ganga stated that she had been held with adult detainees while in detention. She was released on ordinary bail on 22 March 2009.

Recognizing that it may take time to set up juvenile courts in all districts, the Children’s Act also allows for transitional measures. Section 55 (3) states: “The concerned District Court shall have the power to hear and decide the case pursuant to sub-section (2) until the

Juvenile Court pursuant to sub-section (1) is constituted and after the constitution of the Juvenile Court the case filed in the District Court shall be transferred to the Juvenile Court.” Section 55 (4) states: “There shall be a Children’s Bench in each District Court for hearing and deciding the case to be heard from the District Court pursuant to sub-section (3).”

Section 55 (5) states: “The Government shall prescribe the procedure relating to the constitution of the Children’s Bench pursuant to sub-section (4) on the advice of the Supreme Court and may include social worker, child specialist or child psychologist besides the judge while prescribing tile bench.” The Juvenile Justice Regulations provide further guidance to the court regarding the creation of a child friendly atmosphere in the court; and the presence of parents or guardians as well as professionals such as social workers.

Although the Children’s Act was passed in 1992, it has taken the government a long time to put it into practice. In April 2000 the government declared 10 districts as model districts for the establishment of Juvenile Benches<sup>22</sup>, and since then the ‘model court’ has been implemented in 26 districts<sup>23</sup> throughout the country. In these courts a child psychologist and social worker are present throughout the case, and sit alongside the judge. The Juvenile Justice Regulations 2006 are being implemented more systematically in those

<sup>22</sup>Official Gazette, 10 April 2000.

<sup>23</sup> The 26 districts are as follows: Ilam, Jhapa, Morang, Sunsari, Udayapur, Saptari, Dhanusha, Parsa, Makwanpur, Chitwan, Kathmandu, Bhaktapur, Lalitpur, Kavrepalanchowk, Kaski, Syangja, Baglung, Palpa, Rupandehi, Dang, Banke, Kailali, Surkhet, Kanchanpur, Jumla and Nawalparasi.

districts, though clearly major concerns remain in places like Dhanusha.

And, in other districts, the vast majority of juveniles are still tried before the same court systems as adults. In all districts, very few investigative officers have been trained to investigate crimes allegedly committed by children.

According to Rule 3 of the Juvenile Justice Regulations, a separate police unit should be formed to conduct investigations into offences committed by children. Where there is difficulty in the formation of the unit, a police officer should be appointed by the head office for the purpose. However in practice this has not been the case. No units have been created, and juvenile cases are still submitted to the same investigative procedures as adults.

The Juvenile Justice Regulations are largely adequate in themselves but require more effective implementation. For instance, according to Rule 4 (c), the arresting force is to inform the child, in a language that the child understands, of his or her rights. However, according to Advocacy Forum's findings, only 10.7%<sup>24</sup> of the juvenile detainees were aware of their rights at the time of their interview with Advocacy Forum. The police had therefore obviously failed to adequately inform them of their rights.

Another failure is the lack of implementation of Rule 4 (e). Under this regulation, the arresting force has to ensure that the medical and psychological well-being of the child is checked by a medical

<sup>24</sup> See table i) of Annex A.

practitioner or at a nearby government hospital. This regulation applies to all detained juveniles upon their arrest. However, only 86.05% received a medical check-up during their time in detention.<sup>25</sup>

Rule 5 sets out the safeguards that are to be implemented during the interrogation of the juvenile. As it is most frequently during this time that juveniles are tortured and intimidated, by police officers, these may be some of the most important safeguards. Paragraph 2 of the rule states that parents or a guardian are to be present during the interrogation. However, as seen in the cases presented in this report, this is rarely the case. Furthermore, paragraph 4 states that juveniles must not be interrogated for more than one hour at once or at night time. As we have seen in the case examples contained in this report, there have been instances of police waking juvenile detainees up in the middle of the night to take them to interrogation,<sup>26</sup> and often questioning will last for several hours at a time.<sup>27</sup>

#### 4.5. Lack of systematic approach to age verification

##### *Definition of a child and minimum age of criminal responsibility in Nepali law*

Another stumbling block in the protection of juveniles in Nepal is the definition of a child. According to the UN Rules for the Protection of Juveniles Deprived of their Liberty, “A juvenile is every person

<sup>25</sup> See table m) of Annex A.

<sup>26</sup> See case of Padam Mali below, who was taken for questioning at midnight.

<sup>27</sup> See case of Indra Bahadur below who was questioned for more than 2 hours.

under the age of 18”.<sup>28</sup> According to Nepali law, a child “means every human being below the age of 16 years.” Nepal must amend its laws so as to be in accordance with its international obligations.

The provisions for criminal responsibility and detention of minors in Nepali law are also cause for concern.

According to the Children’s Act, Section 11(1), “If the Child below the age of 10 years commits an act which is an offence under law, he shall not be liable to any type of punishment.” Section 11 (2) states: “If the age of the Child is 10 years or above 10 years and below 14 years and he commits an offence which is punishable with fine under the law, he shall be warned and explained and if the offence is punishable with imprisonment, he shall be punished with imprisonment for a term which may extend to six months depending on the offence.” Section 11 (3) states: “If the child who is above 14 years and below 16 years commits and offence he shall be punished with half of the penalty to be imposed under law on a person who has attained maturity.”

However, according to General Comment No. 10 of the CRC, the minimum age for criminal liability is internationally recognised as 12-years-of-age.<sup>29</sup>

In the detention facilities visited by Advocacy Forum, 4 detainees were under the age of 9, 86 were aged between 9 and 12, 450 were between 13 and 15 and 417 were 16 to 17.

<sup>28</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, A/RES/45/113, para. 11.a .

<sup>29</sup> CRC/C/CG/10.

### *Age verification*

In Advocacy Forum's experience, the police regularly deliberately falsely record the age of the juvenile detainees apparently to avoid having to follow the provisions of the Children's Act and Juvenile Justice Regulations. In such cases, Advocacy Forum seeks the assistance of the medical profession to conduct age verification tests. However, as the age tests normally used are not very advanced<sup>30</sup> and tend to rely on doctors' subjective judgement, the results are not very accurate. Though Advocacy Forum suggests to the authorities to give the benefit of the doubt to the child, i.e. to in case of doubt select the lower age, in practice this does not happen very often.

According to UNICEF only 35% of rural and 42% of urban children have their births registered.<sup>31</sup> This means that in the majority of cases, the age of possible minors cannot be verified through birth certificates. If the age is under dispute, those juveniles normally undergo age verification tests. Rule 15 of the Juvenile Justice Regulations provide for this, but merely states verification has to be done by 'government hospital' without specifying the method to be used. It is therefore necessary as a matter of priority, for a systematic and reliable method to conduct age verification tests to be determined and systematically applied in all cases where there is even the slightest indication that the detainees may be under the age of 18. This procedure must be

<sup>30</sup> [The most reliable methods include dental and hair checks. In Nepal, many doctors use bone structure tests, which are less reliable.]

<sup>31</sup> UNICEF, Nepal- Country Statistics, available at [http://www.unicef.org/infobycountry/nepal\\_nepal\\_statistics.html](http://www.unicef.org/infobycountry/nepal_nepal_statistics.html), accessed on 11 December 2009.

established in line with internationally accepted best practice, and all doctors should be provided the necessary training.

When visiting Kathmandu District Court in November 2009, Advocacy Forum staff met three defendants in an attempted murder case. All three defendants appeared to be young. When asked, two said they were fifteen and one thirteen. The mother of the thirteen year old confirmed his age. The court had nevertheless concluded that the older two were above the age of sixteen based on medical examinations. The doctor was not called to give evidence of his opinion. All three were being tried in the standard District Court. There was no alteration of court procedure. The two elder defendants were handcuffed for the duration of the court appearance. The younger defendant was also handcuffed when entering and leaving the court (for instance when he went to the bathroom).

#### **4.6. Excessive practice of pre-trial detention**

According to Section 15 of the State Cases Act 1992, anyone arrested can be placed in custody for a maximum of 25 days pending investigation. The Section makes no distinction between juveniles and adults. This has led to the misuse of the Section. Even in petty crime cases, it has been found that children are detained for long periods of time without grounds. Police torture or ill-treat juveniles in order to force them to confess. Police then file a charge sheet based on that confession. This is an apparent violation of Article 37 of the CRC which states that “(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a

child shall be in conformity with the law and shall be *used only as a measure of last resort and for the shortest appropriate period of time;*” The CRC General Comment pertaining to this article reads: “[...] Use of pre-trial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pre-trial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pre-trial detention should be limited by law and be subject to regular review.”<sup>32</sup> Furthermore, “The Committee recommends that the State parties ensure that a child can be released from pre-trial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pre-trial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.”<sup>33</sup> And “Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours.”<sup>34</sup>

<sup>32</sup> CRC/C/GC/10 para 80.

<sup>33</sup> CRC/C/GC/10 para.81.

<sup>34</sup> CRC/C/GC/10 para 82.

#### **4.7. Breaches of the right to fair trial**

##### *Lack of legal presentation and presence of guardians during trial*

Section 19 of the Children's Act states that 'the Court shall not entertain or decide a criminal charge brought against the Child unless there is a legal practitioner to defend the Child.' However, this provision has not been implemented properly. In practice, court hearings in cases of juveniles are regularly carried out without presence of legal counsel.

According to Section 51 of the Children's Act, a hearing must be done in the presence of the children's guardians for those children who are below the age of 14. However in practice this legal provision is not implemented. Under international law, the protections provided by Section 51 should be extended to all children under the age of 18.<sup>35</sup>

##### *Inappropriate use of confessions*

Directly linked to pre-trial detention is the extensive use of confessions. Keeping juveniles in prolonged pre-trial detention, in a country where the judicial system, in the absence of effective forensic criminal investigations, relies heavily on confessions provides the investigating

<sup>35</sup> Article 40 (2) (b) (iii) of the Convention on the Rights of the Child reads: "To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, *in the presence* of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, *his or her parents or legal guardians*".

officers the time to extract such confessions. According to Article 40 (2)(b)(iv) of the CRC states: ‘every child alleged as or accused of having infringed the penal law has at least the following guarantees: [...] Not to be compelled to give testimony or to confess guilt.’<sup>36</sup> The Committee has clarified this provision in its General Comment No.10, to mean not only that confessions obtained through torture and ill-treatment are inadmissible, but that ‘[t]he term “compelled” should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: “You can go home as soon as you have given us the true story”, or lighter sanctions or release are promised.’<sup>37</sup>

### **‘Bal Krishna’**

Bal Krishna was 15-years-old at the time of arrest and had dropped out of school when studying in Grade Seven. He is a permanent resident of Ithaharawa VDC, Mahottari district and a temporary resident of Siddharthanagar Municipality, Rupandehi district.

<sup>36</sup> Article 40 of CRC.

<sup>37</sup> CRC/C/GC/1 para 56-58.

He was arrested on 2 May 2009 at 12 am midnight from his brother's house allegedly for raping his sister-in-law.

As he informed Advocacy Forum: "I was taken directly to Rupandehi DPO in a police van. While being taken to the police detention centre, I was tortured inside the police van by the two policemen sitting next to me. They pressed my legs with their heavy boots and also kicked me with their boots. They scolded me using abusive language. A policeman sitting in the driver's seat also pulled my hair out from the roots.

One of the policemen kicked me twice on my back with his boot after taking me out from the police van. I was then kept inside the detention room.

The next morning I was taken to the legal section in Rupandehi DPO at around 7 am. The policemen interrogated me about the way I raped my sister-in-law and the person who gave me the instruction to commit the act. The policemen tried to force me to confess and started torturing me. The policeman beat me with a plastic pipe for around 10 minutes all over my body indiscriminately and then took me back to the detention room.

I was again taken out of the detention room after 3-4 hours the same day and taken to one of the rooms where documents and files were kept. One of the policemen remained inside the room and closed the door. While interrogating me about the case, he beat me on my legs, back, hip and hands using a black plastic pipe. He pressured me to admit to raping my sister-in-law on my brother's instruction. This continued for about half an hour.

That same day, after dinner I was taken to the legal section. The two policemen who tortured me earlier were sitting there with one new policeman. They questioned me again about the case, and when I maintained my position, the policemen tied both my hands and knees with plastic rope inserting a stick beneath my knees. Then the two policemen hung me from the inserted stick while holding it each at one side and the third policeman beat me forcefully with a plastic pipe on both the soles of my feet about 40 times. Then, they untied the rope and made me run on the ground barefoot for some time. They then threatened to chop off my legs and hands and kill me if I continued to deny the charge. Then I was taken to the backyard of the police detention centre. They tied my hands and legs as before by inserting a stick beneath my knees and hung me along the inserted stick. From the fear of death and unbearable torture, I finally confessed to the rape, stating that I committed the offence as per the instruction of my brother. The policemen threatened me with further torture if I didn't stick by this statement in the court. I was not tortured again.”

On 17 May 2009, when the victim was produced before the court for his second remand he mentioned the torture. At his request the court ordered that he receive a physical and mental check-up.

The District Court acquitted him on 31 December 2009. Now he is released and living normal life.

### *Quasi-judicial powers of CDOs*

Several Nepali laws, such as the Arms and Ammunition Act 1963 and the Public Offences Act 1970 (POA) provide powers to Chief District Officers (CDOs) to sentence detainees to prison terms during quasi-judicial hearings which fall far short of international standards of fair trial. In particular, juveniles are often arrested under the POA for minor fights with their friends or other incidents judged by the police to disturb public order.

The Arms and Ammunition Act 1963, provide powers to Chief District Officers (CDO) to sentence detainees to up to 7 years in prison during quasi-judicial hearings which fall far short of international standards of fair trial. For cases under the POA, the CDO is the officer of first instance responsible for taking legal action and delivering verdicts. Section 6 of this Act provides that CDOs may sentence those convicted to a fine of up to Rs 10,000/- and prison term of up to 2 years. The authority imbued in CDOs defies the principle of separation of powers as CDOs do not qualify as a truly independent or impartial tribunal.

CDOs further receive no judicial training and are not required to have a legal education background. They are more likely to accept confessions extracted through torture. This is reflected in the discrepancy in conviction rates between District Courts and CDOs. In the fiscal year of 2006-2007 the District Courts decided 4,524 criminal cases and CDOs decided 2,516 criminal cases. The District Courts convicted the defendant in 72.67% of the 4,524 criminal cases. The CDOs convicted in no less than 98.27% of cases.<sup>38</sup>

<sup>38</sup> The Attorney General of Nepal ‘Annual Report’ (Fiscal Year 2063-64, Kathmandu), p. 55.

### **SC bars DAO to adjudicate juvenile cases**

Advocacy Forum filed a writ of habeas corpus on behalf of 14-year old Saroj Rai in the Supreme Court demanding the implementation of Section 42, 44, & 50 (1) of the Children Act –1992. Against the said provisions, the District Administration Office as per the Public Offence and Punishment Act-2027 (BS) had passed a verdict to send minor Rai to serve a jail term. Issuing a positive order on 26 October 2009, the Supreme Court held that cases relating to juveniles must be heard in a juvenile court citing references to the Convention of the Rights of the Child (CRC) and Section 55 of Children Act-1992, which specifies that the cases concerning juveniles should be heard by the District Courts until the Juvenile Benches are formed, and Law Interpretation Act -2010, which stipulates that the latest law enforced should be prioritized over the older ones. The court further issued orders in the name of the Ministry of Home Affairs to correspond to the DAOs of all the districts to immediately refer the cases concerning juveniles to respective District Courts for the purpose of adjudication. [Can we say something on whether this is being implemented?]

#### **4.8. Failures of existing protection mechanisms and omissions in the Juvenile Justice Regulations**

The Nepali legal system sets out legal safeguards for all detained individuals. However, these safeguards are rarely enforced.

According to the Interim Constitution and the State Cases Act, all detainees are to be produced before a judge within 24 hours of their arrest. Out of the 957 juveniles Advocacy Forum interviewed, only 712 were presented to a judge at all, and only 54.9% of these were produced within the 24 hours proscribed by law. This highlights the vast number of juveniles that are being illegally detained in Nepal.

### **'Ramesh Aryal'**

Ramesh Aryal is 17-years-old, a 7<sup>th</sup> grade examinee and resident of one of the Bhutanese Refugee Camps in Jhapa district.

He was captured and beaten up by villagers on 31 March, 2010 for carrying a sword and setting a house ablaze. The villagers then handed him over to the Armed Police Force (APF) at around 8 pm the same day. Tying his hands with a plastic rope, some 7 to 8 uniformed APF personnel beat him on the spot and finally took him to APF, Camp, Beldangi, Jhapa district.

On the evening of his arrest, during the transit to APF Camp, Beldangi, some 3 - 4 APF men beat him with bamboo sticks, kicked him with police boots and punched him for about 20 minutes asking him why he set a house ablaze. They stopped beating him only after a high ranking police officer ordered them not to beat him. At around 8.30 pm, at the APF Camp, Beldangi, the APF personnel tied his hands on his back with a

white colored plastic rope and forced him to lay on his back on the ground. Two (name and rank unknown) of the five APF personnel stamped on his chest and knees and other 3 in turn beat him with bamboo sticks on his legs and other parts of his body. They abused him verbally too and continued to beat him in turn till 9 pm despite his constant denial.

At around 9 pm on the same day they took him to a room in the APF Camp, Beldangi. There too 5 APF personnel in uniform beat him as before on his soles, chest, legs, bottom and other parts of his body using bamboo sticks and gun butts and kicked him with police boots for about 2 hours. Using verbal abuses they lifted him and threw him on the floor. While asking for water they told him to drink their urine. After that they detained him in a room.

In the room too, they verbally abused the detainee and the 3 unidentified plainclothes APF men punched and kicked him for about 10 minutes.

The following day, i.e. on 1 April, 2010, during the transfer to Area Police Post, Damak, the 3 unidentified APF men kicked and beat him indiscriminately from 6.30 am to 7 am with police boots and gun butts in the police van. After 2 days in the APO, Damak the police made him carry loads of bricks every day for about 2 to 3 hours and beat him every time he took rest or walked slowly. Every day the police beat him 2 – 4 times with bamboo sticks while taking him for lunch/dinner and after the dinner while taking him back to the detention cell. At around 4, 5 pm on 7 April, 2010, while taking him out for manual

work, he escaped from police custody. The same night the police reached his home and beat his father and brother asking for his whereabouts. Then his father and brother told the police where he was sleeping. At around 2 am the police rearrested him and brought him to APO, Damak where 2 policemen beat him with sticks for about 5, 6 minutes as a punishment for escaping from the police custody. From that day on he has to stand by the gate till 12 midnight every day. The police don't let him go to sleep till 12 midnight from that day and don't take him out for labor either. On 10 April 2010 a policeman beat him twice with a bamboo stick for escaping from police custody.

He was illegally detained till 4 April 2010. He was taken to Mechi Zonal Hospital only on 5 April 2010 (5 days after his arrest) just before his remand and not given medicine despite wounds on his body. He was not given arrest warrant and detention letter till his remand. For the first time he was remanded on 5 April 2010 for 5 days and for the second time he was remanded on 11 April 2010 for 10 days. He was subsequently detained in Area Police Post, Damak.

As demonstrated by the case above, there is a common practice by police to hold detainees for several days before bringing them before a judge, despite the constitutional requirement to produce people within 24 hours of arrest.

### **‘Ambar Sen’, ‘Bishnu Gautam’ and ‘Kamdev Thakuri’**

Ambar Sen, 11-years-old, Bishnu Gautam, 10-years-old and Kamdev Thakuri, 11-years-old, are permanent residents of Biratnagar, Morang district. On 18 December 2009 at around 5 am when Kamdev Thakuri was drinking tea in his mother’s tea shop when a police van with 11 policemen in police uniform arrived. The police arrested him and took him in the police van. According to his information, the policemen also arrested Ambar Sen and Bishnu Gautam from a canal and took them to DPO, Morang. They were kept in the women detention cell.

On 16 December, 2009 at around 2.30 am, a businessman who owns an iron shop was robbed and he registered a case in DPO, Morang. The plaintiff wanted to get his goods and withdraw the case. Police used the empty women cell for interrogation. Two unidentified policemen beat them with plastic pipes and a steel ruler on their hands, legs and other parts of their body, asking about the stolen goods and from how many places they had stolen items from. They admitted to the offence and provided the location where they had hidden the stolen goods.

On 18 December 2009, at 4.45 pm the juveniles were handed over to their guardians, after being advised by the police to not steal again. As the FIR was withdrawn after the stolen goods were retrieved, no case was filed.

When AF talked to the mother of one of the victims, she said that her son had done wrong and that the police had inflicted “normal torture” on him. As there has been no impact on his health and the police have released him, the mother did not want to file a case.

There are several safeguards to protect detainees from torture set out in the Torture Compensation Act 1996.<sup>39</sup> It is not required under Nepali law for judges to inquire whether a detainee has been tortured while in custody, although some judges have made it a practice of asking detainees to remove their shirt and state whether they have been subjected to torture by the police.<sup>40</sup> This practice however is not uniform among judges, nor is it common enough to be an effective safeguard against torture.

Of the 712 detained juveniles who were presented before a judge, only 7.2% were asked if they had been tortured.<sup>41</sup> Of these, only very few actually dare tell the truth about their treatment to the judge, as in most cases, the police officers who inflicted the torture were present in the court. The children quite rightly fear that if they openly accuse the police of torturing them, they will be punished upon returning to the detention centre.

<sup>39</sup> (2) While placing in detention or releasing any person, his physical condition shall be examined by a physician under government service as far as possible, and by the concerned official himself in circumstances in which no such physician is available, and a record thereof shall be prepared and maintained. (3) A report of the examination of the physical or mental condition as mentioned in Sub- Section (2) shall be sent to the appropriate district court.

<sup>40</sup> Review of the Implementation of recommendations made by the Special Rapporteur on Torture, Manfred Nowak, after his Mission to Nepal in 2005, Human Rights Watch, Advocacy Forum, Redress, 5 November 2008, p.10. also see Annex 2, Tables 3 and 7.

<sup>41</sup> See table e) of Annex A.

### **'Bikram'**

Bikram was 16 and a student, living in Kapileshwor, Dhanusha at the time he was arrested on 7 January 2010 on suspicion of involvement in an abduction. At DPO, Dhanusha he was beaten up with plastic pipes and sticks all over his body for around 1 hour by some policemen. According to the victim, the following happened: "On 8 January 2010 at around 8:30 pm, I along with other 3 friends was taken upstairs to the inspector's room. When Inspector [name withheld] interrogated us, there were some 3/4 policemen present in the room. Accusing us of abducting a person the policemen started asking us how many of us were involved. Since I knew nothing about it I denied the allegation. Then the policemen got furious and started beating me furiously with sticks and plastic pipes, punched with fists and kicked me with police boots on different parts of my body for about 1 hour to 1 ½ hour. They beat me some 50 to 60 times on the soles of my feet. After that they ordered me to jump on the floor and in the meantime they beat me on my legs with sticks. After that they ordered me to sit in a half sitting posture and beat me on my back and legs with plastic pipes. As I couldn't resist further torture, I accepted all the accusations. Only after that they stopped torturing me." After the trial he was sent to District Prison, Mahotari for judicial inquiry on 5 February 2010. He was detained at the prison for several weeks.

In addition, a majority of the juveniles (58.3%) were not given a letter of arrest as required by law, and only 10.7% of them declared knowing

that they had a right to legal counsel. Only 19% were aware of their legal rights to read statement before signing it.<sup>42</sup>

### **‘Pramod Yadav’**

Pramod Yadav was 15-years-old (in his words) and studying in 5th Grade at the time of his arrest in December 2009. He was a permanent resident of Birendranagar, Surkhet district.

He was arrested by 5, 6 policemen on patrol on 11 December 2009, at around 2.30 pm from the bus park for carrying a khukuri (curved knife).

In a statement provided on 15 December 2009, he stated: “While arresting me CID [name withheld] caught me by my hair and verbally abusing me, punched and kicked me on my back, face and legs for about 5 minutes. In the DPO, Surkhet 3 policemen took me to the guard commander’s room and beat me with bamboo sticks for about 10 to 12 times on my back, legs and shin. Verbally abusing me they kicked and punched me on various parts of my body. Then they forced me to stand upside down against a wall for about 10 minutes and beat on my soles for about 5, 6 times with a bamboo. Due to the police beatings there are welts on my back. Every day from 6 to 8 am I have to clean the office and in the evening I have to supply bricks, cement

<sup>42</sup> See table i) of Annex A.

and sand. Now, I am detained in DPO, Surkhet with adult detainees. I am not taken for medical check-up and till now I have not been given an arrest warrant or detention letter. On 11 December 2009 at around 3 pm an unidentified policeman slapped me for 3, 4 times on my both cheeks during interrogation.”

While asking about the torture, he said that his health condition is normal. He was released from detention on 15 December 2009, on the condition that he report to the police station every two days.

Not providing detainees with a detention letter, or providing it late, is extremely common. This goes against the provisions of the CRC, which states “[e]very child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him/her. Prompt and direct means as soon as possible, and that is when the prosecutor or the judge initially takes procedural steps against the child. [...] Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child’s legal representative or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her.”<sup>43</sup>

<sup>43</sup> CRC/C/GC/10, para 47 and 48.

It is apparent that the system of safeguards for detainees is failing to protect detainees, and particularly juveniles, from torture and other ill-treatment. In a judicial system where the majority of convictions are based on confessions, rather than physical evidence, the pressure on investigators to obtain a statement is considerable. It is therefore all the more necessary to enforce these protections, ensuring not only that juveniles are not tortured, but also that they do not provide a confession under duress.

The Juvenile Justice Regulations 2006 set out safeguards to protect juveniles during investigation and trial. However although some of these provisions are in line with international standards, there is a lack of implementation, knowledge and understanding of these rules among the government officials who are to enforce them.

Although some safeguards are contained in other Acts, it would be advisable to include more specific procedural rules of implementation specific to juveniles in the Juvenile Justice Regulations to ensure, for instance, that no juvenile is held for more than 24 hours before being produced before a judge.<sup>44</sup> Similarly, it would be advisable for the regulations to specify rules on the use of confessions during proceeding against juveniles, and to specify the correct procedure surrounding the signing of statements by juveniles. Torture is most frequently inflicted during interrogation in order to obtain a confession, and only 19% of juveniles were aware they were allowed to read their statement before signing it.<sup>45</sup> It is therefore imperative to provide safeguards to ensure the proper use of these documents.

<sup>44</sup> See table g) of Annex A.

<sup>45</sup> See table j) of Annex A.

If these rules were properly implemented then cases of torture of juveniles in detention would reduce drastically, as there would be very few occasions for the investigating forces to use torture as a method of information gathering. However the failures to implement these rules leave the juveniles vulnerable to abuse and to torture to extract confessions. It therefore is necessary to create a complaints' mechanism that the juveniles and their families can easily approach in case of any abuse or fear of abuse. This would not only act as a means of reparation but also as a deterrent to government officials to commit torture and other ill-treatment in the first place.

### **'Padam Mali'**

Padam Mali was 17-years-old and a 10<sup>th</sup> grade student from Nagdaha VDC, Ramechhap district at the time he was arrested. He was arrested by policemen of Khimti police station, Ramechhap district on 27 May 2009 at 8.30 pm on suspicion of assault. He was taken to Khimti police station first and then transferred to Ramechhap DPO the same night at around 11 pm.

As reported on 28 May, "On 27 May 2009, I was arrested by a group of policemen of Khimti police station from Ramechhap at around 8.30 pm. I was taken to Ramechhap DPO at around 11 pm the same night. At about 12 pm the same night, I was kept inside the detention room of the DPO when a policeman with a Terai look with a black moustache called me. When I went near him, the policeman asked me my name and age. I

found him drunk at that time. Then he slapped me twice on both my cheeks and also punched me once on my face. I started bleeding from my nose. Then, he took me to a place where a pile of bamboo sticks; plastic pipes and other type of sticks were kept. He asked me my choice of stick with which I was going to be beaten. I couldn't reply to his question. And then, the policeman took a plastic pipe and beat me at once on my head for a single time, and 3-4 times on my back, arms, thigh and calves. He also carried out interrogation while torturing me, and all this lasted about an hour. He even threatened to pass electric shock through my body if I didn't confess."

On 30 May 2009, the family of the tortured victim came to Advocacy Forum to report about the torture inside the police detention and requesting help. A lawyer accompanied them to Ramechhap DPO and helped them to talk with Inspector [name withheld]. In the DSP's absence, the inspector informed the Advocacy Forum lawyers and the family members of the tortured boy that they had not ordered the police constable (who tortured the boy) to torture the boy. He also informed them that the DSP had already initiated departmental action against the police constable. He added that the family and lawyers should not worry too much about this issue.

Since the tortured boy had already been released from police detention without any charge, his family members showed satisfaction on the statement of the inspector. Considering this mediation process as a more effective means of seeking justice than the lengthy court practice, the family did not expect any

further assistance from AF in bringing a case under the Torture Compensation Act.

At present the victim fears police presence and can't keep eye contact with them. He has difficulty trusting new people and stammers when talking with them. He suffers from nightmares, in which someone or something is chasing him.

#### **'Indra Bahadur'**

Indra Bahadur was 16-years-old and a class 12 qualified student at the time of arrest. He lived in Ratna Nagar Municipality, Chitwan district but temporarily living in Sanopit, Kathmandu and working as a painter.

He was arrested on 2 March 2010 by policemen of Sanopit Police Station at around 6:30 pm, and charged under the POA.

On 11 March, 2010 he made the following statement: "On 2 March 2010, at around 6:30 pm I along with my friends were returning back to our homes in a taxi. All of a sudden at Sanopit Police Station some policemen came and asked us where we were heading. Then they said that they needed us for the investigation of a case and took us to Metropolitan Police Circle, Balaju. Later that night they scolded us and abused us but did nothing more than that. The next day at around 6 am, they took us to another room where there were three policemen. Their names are [withheld] (he was recently transferred from

Metropolitan Police Crime Division, Hanuman Dhoka.). They accused us of weapons' smuggling and handcuffed my hands. Then they brought my feet and hands together and inserted a stick between them and began striking my buttocks, feet and different parts of body for about 20 to 25 times. After that they took the stick inserted in between my limbs and the policeman named [withheld] kicked me on my head, back, spine and randomly across the body for about 15 to 20 times. They left me for a while and again after that they asked questions. I knew nothing of that so they put my head on the floor, my legs on the table and began striking my feet with a plastic pipe. They beat me for about 15 minutes in that position. The three of them again kicked me like a soccer ball randomly all over my body. After 2 hours of this torture they stopped. After that they took me to the Metropolitan Police Circle, Kalimati.

Due to torture I had blisters on my feet. I had pain on my spine, head and feet but I am improving considerably now."

Although he had been released from detention, the victim was still at the time of the interview being intimidated and threatened by the policeman called [name withheld]. He reported that he was suffering from psychological trauma and anxiety. He reported that this was happening as the police officer knew that his mother had contacted human rights organizations to seek redress for the torture inflicted on him. The victim cited everything about the torture without fear but rather in anger over the policemen. He reported that he needed to consult his mother before carrying on with the case.

He did not want to file a TCA case as he had previously been arrested on another charge and was afraid of the police. He was scared that there would be reprisals if he filed a case against the police. Also after his release, his wounds healed and he wanted to forget the past.

#### **‘Kamal Adhikari’**

Kamal Adhikari is 16-years-old and a permanent resident of Sunsari district. He is from the poor and marginalized Mushar community. He was taken in control on 2 April 2009 at around 10 am for stealing a coconut. He was punched and kicked on the spot and beaten with a plastic pipe in Chimdi Police Office. He was illegally detained for 32 hours.

In a statement given on 6 April 2009, the victim states: “On 2 April 2009, At around 10 am [a neighbour] came to my house with police Sub-inspector [name withheld] and three other police officers. When [the neighbour] saw me, he pointed at me and accused me of stealing a coconut from his field. Then the SI grabbed me by my hair and pushed me on the ground. Kicking and slapping me on different parts of my body, he took me to Chimdi Police Office.

He detained me there for 2 days (2 and 3 April 2009) without any ground. In the Chimdi Police Office the SI beat me with a plastic pipe on my left arm, left shoulder, left armpit, right armpit and back of my body accusing me of stealing a coconut

from [the neighbour]’s field. At night they made me chop firewood. On 4 April 2009 the police released me into the care of my parents.

During my detention I was not asked to make a statement. However I was forced to sign a statement before my release.”

After his release, the victim was ill for one week. He had marks (abrasions) from the torture.

On 6 April, 2009 the victim contacted Advocacy Forum-Sunsari and asked for legal support. The same day AF-Sunsari filed an application in the District Court, Sunsari on behalf of the victim seeking an order for his physical and mental check-up.

With the legal support of AF, the victim filed a Torture Compensation Act writ in the District Court, Sunsari on 12 April 2009. The victim missed the hearings for this case. As the sub inspector [name withheld] whom he had identified as one of the perpetrators is from his village, his family received threats, leading him to not attend the court hearings. His case was subsequently dismissed in February 2010. The District Court is preparing the final verdict.



## Conclusions and recommendations

In light of the findings set out in this report, Advocacy Forum calls on all government institutions to implement fully existing Nepali law in so far that it is in line with international standards on detained juveniles, ensure an end to torture and other ill-treatment of juveniles, and to abide by the rulings of the Supreme Court and implement all outstanding recommendations of relevant international bodies, such as the Committee on the Rights of the Child and the Special Rapporteur on Torture.<sup>1</sup> Advocacy Forum further calls on all NGOs and INGOs working with juveniles in detention to step up their monitoring, and increase the pressure on governmental institutions.

### A. Recommendations relating to torture and arbitrary detention and unfair trial of juveniles:

- 1- All reports of torture of juveniles need to be independently investigated and those responsible brought to justice.

<sup>1</sup> CRC Nepal 2005, Nowak 2009.

- 2- Juveniles should, as much as possible, be kept in parental custody, and guidelines should be issued to ensure the placement of juveniles in child rehabilitation homes is practiced as an exceptional measure. At no time should juveniles be detained with adults, unless it is in their best interest.
- 3- The authorities should ensure that juvenile detainees are questioned in a child friendly environment, preferably in the presence of their parent(s) or guardian, in line with Rule 5 of the Juvenile Justice Regulations of 2006.
- 4- The legal definition of a child should be changed from anyone under 16 to anyone under 18 and the minimum age of criminal responsibility should be increased from 10 to at least 12 years old.
- 5- The government should, within one year at the latest, implement the judgments of the Supreme Court requiring the creation of child rehabilitation homes.
- 6- The government should allocate resources to create other necessary infrastructure, such as separate units in the police specialising in juveniles and training to mitigate existing gaps between law and practice.
- 7- Introduce an advanced official system of age verification testing, and train doctors to ensure it is applied consistently across the country.

- 8- Review all legal and judicial procedures (including the powers given to Chief District Officers) to ensure juveniles are guaranteed the right to fair trial.

**B. Recommendations relating to torture in general:**

- 9- Introduce comprehensive legislation to criminalize torture as a matter of priority.
- 10-Put in place an effective and impartial mechanism for the prevention and investigation of torture
- 11-Immediately sign and ratify the Optional Protocol to the Convention against Torture, putting in place a mechanism for independent monitoring of all places of detention.



## ANNEX-A

Tables with data for the period April 2009 to March 2010

***Total number of juveniles interviewed: 957***

**Table (a): Torture infliction**

		Frequency	Percent
Valid	Yes	213	22.3
	No	744	77.7
	Total	957	100.0

**Table (b): Torture infliction by sex**

Sex	Female	Count	Torture infliction		Total	
			Yes	No		
Sex	Female	Count	6	54	60	
		% within Sex	10.0%	90.0%	100.0%	
	Male	Count	207	690	897	
		% within Sex	23.1%	76.9%	100.0%	
Total		Count	213	744	957	
		% within Sex	22.3%	77.7%	100.0%	

**Table (c): Torture infliction by caste group**

Caste Group	B/C group		Torture infliction		Total
			Yes	No	
		Count	53	260	313
		% within	16.9%	83.1%	100.0%
		Caste Group			
	Dalit group	Count	33	100	133
		% within	24.8%	75.2%	100.0%
		Caste Group			
	Indigenous group	Count	63	218	281
		% within	22.4%	77.6%	100.0%
		Caste Group			
	Newar group	Count	9	42	51
		% within	17.6%	82.4%	100.0%
		Caste Group			
	Other group	Count	13	43	56
		% within	23.2%	76.8%	100.0%
		Caste Group			
	Terai Ethnic group	Count	42	81	123
		% within	34.1%	65.9%	100.0%
		Caste Group			
Total		Count	213	744	957
		% within	22.3%	77.7%	100.0%
		Caste Group			

**Table (d): District-wise Torture infliction**

			Torture infliction		Total
			Yes	No	
Detention Place	Dhanusha	Count	17	14	31
		% within*	54.8%	45.2%	100.0%
	Morang	Count	20	26	46
		% within*	43.5%	56.5%	100.0%
	Surkhet	Count	28	44	72
		% within*	38.9%	61.1%	100.0%
	Jhapa	Count	17	31	48
		% within*	35.4%	64.6%	100.0%
	Udhayapur	Count	6	14	20
		% within*	30.0%	70.0%	100.0%
	Myagdi	Count	4	10	14
		% within*	28.6%	71.4%	100.0%
	Rupandehi	Count	16	40	56
		% within*	28.6%	71.4%	100.0%
	Bardiya	Count	7	18	25
		% within*	28.0%	72.0%	100.0%
	Kapilbastu	Count	4	12	16
		% within*	25.0%	75.0%	100.0%
	Banke	Count	11	41	52
		% within*	21.2%	78.8%	100.0%
	Kathmandu	Count	52	227	279
		% within*	18.6%	81.4%	100.0%
	Ramechhap	Count	2	10	12
		% within*	16.7%	83.3%	100.0%

			Torture infliction		Total	
			Yes	No		
	Kaski	Count	17	100	117	
		% within*	14.5%	85.5%	100.0%	
	Parbat	Count	1	6	7	
		% within*	14.3%	85.7%	100.0%	
	Lalitpur	Count	7	49	56	
		% within*	12.5%	87.5%	100.0%	
	Kanchapur	Count	1	12	13	
		% within*	7.7%	92.3%	100.0%	
	Dolakha	Count	3	67	70	
		% within*	4.3%	95.7%	100.0%	
	Baglung	Count	0	16	16	
		% within*	0%	100%	100%	
	Siraha	Count	0	3	3	
		% within*	0%	100%	100%	
	Sunsari	Count	0	4	4	
		% within*	0%	100%	100%	
Total		Count	213	744	957	
		% within*	22.3%	77.7%	100.0%	

\* Detention Place

**Table (e): Judge asked about torture**

		Frequency	Percent	Valid Percent
Valid	Yes	51	5.3	7.2
	No	661	69.1	92.8
	Total	712	74.4	100.0
Not taken to court		245	25.6	
Total		957	100.0	

**Table (f): Taken to the Court**

		Frequency	Percent
Valid	Yes	712	74.4
	No	245	25.6
	Total	957	100.0

**Table (g): Within 24hour**

		Frequency	Percent	Valid Percent
Valid	Yes	391	40.9	54.9
	No	321	33.5	45.1
	Total	712	74.4	100.0
Not taken to court		245	25.6	
Total		957	100.0	

**Table (h): Received letter of arrest/detention letter**

		Frequency	Percent
Valid	Yes	399	41.7
	No	558	58.3
	Total	957	100.0

**Table (i): Aware of their legal rights**

		Frequency	Percent
Valid	Yes	102	10.7
	No	855	89.3
	Total	957	100.0

**Table (j): Aware of rights to read statement before signing it**

		Frequency	Percent
Valid	Yes	182	19.0
	No	775	81.0
	Total	957	100.0

**Table (k): Allowed to meet a Family Member**

		Frequency	Percent
Valid	Yes	682	71.3
	No	275	28.7
	Total	957	100.0

**Table (l): Police provide food or money for food**

		Frequency	Percent
Valid	Yes	874	91.3
	No	83	8.7
	Total	957	100.0

**Table (m): Provided a health check-up**

		Frequency	Percent
Valid	Yes	828	86.05
	No	129	13.05
	Total	957	100.00

## ANNEX-B

### Juvenile Justice (Procedure) Regulations 2006

*Nepal Government has made following rules for the Jurisdiction of section 58 of Child Right Act 2048*

#### **Rule 1: Short title and commencement**

1. Title relating to this rule is “Juvenile Justice (Procedure) Regulations 2063”
2. This regulation will be immediately commenced.

#### **Rule 2: Definitions**

Unless subject or context otherwise requires, in this regulation:

- (a) ‘Act’ shall mean Children’s Act 2048
- (b) ‘Juvenile court’ shall mean the juvenile court constituted pursuant to section 55(1) of the Act.
- (c) ‘Juvenile bench’ shall mean juvenile bench constituted pursuant to section 55(3) of the Act.

- (d) ‘Investigation officer’ shall mean the officer empowered to investigate the offense pursuant to Rule 3.
- (e) ‘Charge sheet’ shall mean the charge sheet prepared pursuant to State Cases Act 2049.
- (f) ‘Organization’ shall mean the organization registered according to the existing law.
- (g) ‘Person or organization providing service’ shall mean the person or organization enlisted according to Rule 21.

**Rule 3: Separate police officer or unit is to be designated**

There shall be a separate unit consisting of police officers who have obtained qualification according to existing law in every police office for the investigation of the offense committed by juveniles. Unless there is such unit, police headquarters may designate any police officer to do that task.

**Rule 4: Provisions relating to investigation**

While conducting investigation [‘anusandhan’]<sup>1</sup> of the offense committed by a juvenile according to the existing law, the police unit or officer pursuant to Rule 3 must follow the following provisions in addition to the provisions contained in existing law:

- (a) Police officer must put on civil dress not police uniform.

<sup>1</sup> ‘Tahakikhat’ is another word for investigation.

- (b) While arresting the juvenile, he must show the document which reveals his identity and must mention the reason to arrest the juvenile.
- (c) He is to inform the arrested juvenile of his constitutional and legal rights in a language which the juvenile understands.
- (d) As far as possible, he is to give information about the offense done by the juvenile to both father and mother if they are available, or at least one of them, and his patron if his parents are unavailable.
- (e) He is to cause to check physical or mental health of juvenile by the nearby medical practitioner or in the nearby government hospital.
- (f) He [police officer and unit] must keep both his parents if available or at least one and his patron if parents are not available in presence while conducting inquiry and obtain their acknowledgement that they were present.
- (g) He is to request the person or organization providing service to prepare social history report of the juvenile in the format provided in the Schedule.

#### **Rule 5: Interrogation**

- (1) While the investigating officer interrogates the juvenile, he must ask the juvenile by creating child friendly-environment in which he can answer the questions asked.
- (2) While interrogating pursuant to sub-Rule (1), it may be done in the presence of the juvenile's father, mother, patron, lawyer, or the representative of child welfare home, or another destitute home if he is living in such place.

- (3) While interrogating pursuant to sub-Rule (1), the investigating officer may ask about the concerned offense, family and social background of the juvenile and other necessary matters.
- (4) The juvenile must not be interrogated for more than one hour at once or at night time.

**Rule 6: Procedure for the formation of the Juvenile Bench**

- 1- The juvenile bench shall be established with the involvement of social worker, child expert or child psychologist along with the judge (justice) in the district court.
- 2- The chief justice in the district court should appoint a juvenile justice where more than one judge exists.

**Rule 7: Information is to be given**

- (1) Once the charge sheet is filed against the juvenile, juvenile court or juvenile bench must immediately give a copy of the charge sheet and written evidence relating to it to the juvenile's father, mother or patron.
- (2) While giving information pursuant to sub-Rule (1), the information must be provided to the juvenile's lawyer if the juvenile's father, mother, or patron are not found, or if they refuse to receive such information.
- (3) Notwithstanding anything contained in sub-Rules (1) and (2), the juvenile's father, mother or patron may receive such information by being present in the juvenile court or juvenile bench on their own.

**Rule 8: The qualifications of social worker, child specialist, or child psychologist**

Following should be the qualification of the social worker, child expert or psychologist working for the juvenile bench.

- a- Training obtained in child rights and psychology.
- b- Should history of criminal offense in the court.
- c- Should have the qualification of intermediate level or similar qualification.

**Rule 9: Selection of social worker, child specialist or child psychologist**

- a- According to rule No. 8 the court should call for vacancy announcement for qualified candidates for the social worker and child specialist.
- b- The district court should submit the list of the candidates to the Ministry of Women, children and Social Welfare as per regulation (1) screening the applications.
- c- For the discussion as per section 5 of sub section (5) the Ministry of Women, children and Social Welfare should send the list of the applicable candidates to the court received as per regulation (2).
- d- The district court should appoint the names of the separate social worker and child psychologist in each district court according to the list obtained from the Supreme Court
- e- The facility for the appointed social worker and the child psychologist should be as per government rules and regulations of Government of Nepal.

- f- Whatever is mentioned above, the other social workers and child experts who are in the roaster shall participate in the procedure of the cases as per regulation (3) if the appointed socialists or child psychologist deny or should not right to look the case.

**Rule 10: Social worker, child specialist, or child psychologist can be removed.**

- a- The listed Social worker and child expert or child psychologist can be eliminated from the name list if he found guilty in wrong behaviors or unable to work because of his inefficiency on the work or involved in the abuse of the power or he was absent from the juvenile bench regularly for 3 times.
- b- The district court should inform to the Supreme Court and Ministry of Women, children and Social Welfare if any social worker or child psychologist submitted an application before the district court asking for the list out his name.
- c- According to regulation (1) the district court should provide chance for the hearing before his elimination is eliminated from the list.

**Rule 11: The exercise of jurisdiction**

- (1) While hearing in juvenile court or juvenile bench, judge, social worker, juvenile specialist, or child psychologist shall act collectively. Provided that the task performed by the judge shall not be void if all or any of the social worker, child specialist or child psychologist are not present in the juvenile bench.
- (2) Social worker, child specialist, or child psychologist shall submit their written opinion before the judge.

- (3) Having received the opinion pursuant to sub-Rule (2), the judge shall decide the case.

#### **Rule 12: Hearing of the case**

- (1) The hearing must be conducted in child-friendly environment in the juvenile court or juvenile bench.
- (2) The juvenile court or juvenile bench must use the language the juvenile understands and the language which suits the juvenile's age and his physical and mental development.
- (3) While hearing the case, the juvenile court or juvenile bench must inform the accused juvenile about the nature of the offense and witnesses / evidence that were collected.
- (4) While interrogating the juvenile, a camera can be installed in a separate room of the district court and he may be interrogated there by making arrangements that interrogation gets displayed on a screen in front of the bench.
- (5) The juvenile court or juvenile bench may designate child psychology expert or person who can converse or communicate with the juvenile easily so as to interrogate the juvenile pursuant to sub-Rule (4).
- (6) While interrogating pursuant to sub-Rule (4), the juvenile's father, mother, patron, or lawyer may sit with him.

### **Rule 13: Evidence examination**

- (1) If social study report is found to be not attached with the charge sheet when the charge sheet is filed, the juvenile court or juvenile bench may order the person or organization providing service, or other organizations instituted according to law so as to protect the juvenile's interest, to prepare and submit such report.
- (2) Anyone may make an application to juvenile court or juvenile bench asking to examine the evidence if he has any which rebuts the accusation made against the juvenile.
- (3) If application pursuant to sub-Rule (2) is received, the juvenile court or juvenile bench may permit submission of such evidence.

### **Rule 14: Witness examination**

- (1) If the juvenile wants to present witnesses on his behalf on his own, the juvenile court or juvenile bench may permit to call such witnesses.
- (2) The witnesses called pursuant to sub-Rule (1) shall enjoy the facility mentioned in State Cases Rule, 2055.

### **Rule 15: Age determination**

If there is dispute regarding the age of the Child, the Juvenile Court or Juvenile Bench must determine the Child's age on the basis of the following documents:

- (a) The date of birth mentioned in the birth certificate issued by the hospital.

- (b) If the certificate according to part (a) is not available, the date of birth mentioned in birth registration certificate issued by local Village Development Committee or Municipal officer.
- (c) If the certificate according to part (b) is not available, the date of birth mentioned in the character certificate issued by school or the date of birth mentioned while the Child is enrolled in school.
- (d) If the certificate according to part (c) is not available, age as verified by government hospital.

#### **Rule 16: Judgment**

The juvenile court or juvenile bench must decide the case within 120 days from the day case [‘muda’]<sup>2</sup> is filed.

#### **Rule 17: Content to be mentioned in the judgment**

Following should be mentioned in the decision along with the existing law.

- a- Summary of the charge sheet.
- b- Evidence of the presence.
- c- Brief summary of the Social worker, child specialist involved in the juvenile bench.

<sup>2</sup> ‘Muda’ means case. It is not defined in this section but it is mentioned in State Cases Act and is referenced in the detention letter. Thus, an argument can be made that ‘muda’ in this context includes FIR, not charge sheet.

- d- Advocates' claim.
- e- Contextual president.
- f- Proofs of the crime.
- g- Reason and grounds of decision making.
- h- Adherence for the remedy of juvenile reform.
- i- Description of the compensation to be paid or not.

#### **Rule 18: Provision regarding the execution of judgment**

The execution of the judgment made according to this regulation shall be done according to existing law.

#### **Rule 19: Duplicate copies to be given for free**

The juvenile court or juvenile bench must provide the copy of the judgment to the concerned juvenile for free.

#### **Rule 20: Cooperation [Assistance?] can be obtained**

The investigation officer can take the assistance from the local authority, police, local administration, and social and non government organization while investigating or finalizing the case. And these authorities should oblige to provide help to the investigation officer.

**Rule 21: List of the person or organization providing services to juvenile accused**

- a- The district child welfare Committee should make a list of the organizations that are willing to help the children, who are found guilty in any crime, for the study of social background of the children, psychological counseling and other juvenile correction services.
- b- The Nepali citizens who are willing to be listed in the name of those organizations can submit an application at district child welfare committee.

**Rule 22: Juvenile justice coordination committee**

(1) For the coordination between the organizations related to the juvenile justice there will be a coordination committee according to the following:

- a. Judge appointed by the chief justice - President
- b. Deputy Attorney General , Attorney General's office- member
- c. Secretary of Law, justice and parliamentary affairs or gazetted first class officer recommended by the secretary – Member
- d. Secretary, Home Ministry or gazetted first class officer recommended by the secretary – Member
- e. Secretary, Women ,Children and Social Welfare or gazetted first class officer recommended by the secretary – Member
- f. Secretary, Home Ministry or gazetted first class officer recommended by the secretary – Member

- g. Additional Inspector General of Police – Police Headquarters- Member
  - h. Executive Director, Children Welfare Central Committee- Member
  - i. One of the organizations working on the field of children welfare recommended by Children Welfare Central Committee – Member
  - j. Registrar- Supreme Court- Member Secretary
- (2) According to the clause (i) of Sub rule (1) the duration of the post of the appointed members will be of 2 years and they can be reappointed.
- (3) Other working procedures regarding the committee meetings will be scheduled by the committee itself.
- (4) According to the Sub rule (1) the committee can invite, if need be, persons related to the juvenile justice to the meetings.
- (5) The work, obligation and rights of the committee would be as follows:
- a. If needed, to give suggestions and recommendations about the law and policy management to the Nepal Government for the improvement and development of the juvenile justice system.
  - b. To coordinate between the programs that has been done by national and international organizations working for the child rights and juvenile justice system.
  - c. To facilitate the implementation juvenile justice in a quick and effective way, capacity building programs will be organized for to the government and non-governmental organizations working in the field of the juvenile justice and introduce to them the new ideas and programs that has been formulated in regards with the juvenile justice.

- d. To request to the Nepal government to include the child rights and juvenile justice in the curriculum of the schools, universities and educational institutions.
  - e. To oversee the level of services and work of those institutions involved in the field of child rights and juvenile justice.
- (6) For the proper functioning of the committee Nepal Government can appoint an officer-level authority on recommendations of Judicial Service Commission to work at the secretariat of the committee. This appointed officer will work on Juvenile Justice Administration and his other functions, duties, rights and facilities will be as directed by the committee.

#### **Rule 23: Secretariat**

The secretariat of Juvenile Justice Coordination Committee will be located at Central Children Welfare Committee.

#### **Rule 24: Translator can be kept**

District Court and investigation authority can use the facility of an interpreter while interrogating a juvenile.

**Rule 25: Instruction can be given**

To conduct actions incorporated in this regulation, the Supreme Court; Attorney General's Office; Police Headquarters; Ministry of Women, Children, Society Welfare, and Central Children Welfare Committee can give necessary directions to the offices under them.

**Rule 26: Other matters shall be regulated as per existing law**

The matters covered by this regulation shall be regulated by this regulation and other matters by existing law.

**Rule 27: Change and amendment can be made to the schedule**

Bringing changes and amendments in the annex: Nepal Government can change or amend annex and publish it in the Nepal Gazette.

## ANNEX-C

### Excerpts from the Supreme Court's verdict on the establishment of Child Correction Homes

Verdict issued by : The Supreme Court of Nepal, Division bench comprising of Justices Tahir Ali Ansari and Rajendra Prasad Koirala

Date of Verdict: September 29, 2008

Petitioner : 13 year old Suresh B.K.

Legal Representation : Attorney Sumedha Shakya (Advocacy Forum)

Respondents : Office of Prime Minister and Council of Ministers; Ministry of Women, Children and Social Welfare ; Central Child Welfare Board; Department of Prison Management; Management Committee of Child Correction Home; Child Correction Home; District Administration Office, Kathmandu; Metropolitan Police Circle, Kalimati, Kathmandu;

#### Excerpts of the verdict:

"The Children Act -1992 [of Nepal] has adopted many provisions set by the aforesaid said convention [CRC] and has also made those provisions as a part of the domestic legislation. The Court is not in a position to be indifferent towards the failure [of the state] to implement those provisions in a situation whereby those provisions have already been incorporated in the Nepali legislation to put in practice the international commitment. There can't be any logical reason to derelict the responsibility and duty

as stipulated by the Nepali legislation and Nepal's international obligation. As stipulated by Section 42 (2) (a) of the Children's Act, the entire onus of establishing adequately furnished Child Correction home with sufficient infrastructure as required and increasing the existing capacity and facilities of those established earlier to meet the current needs falls upon the state. It is the legal and ethical duty of every incumbent government on behalf of the state.

Viewing in the context of the present writ petition, the government has failed to carry out its duty in a rightful way. Therefore, this court hereby issues a directive order in the name of the respondents to establish sufficient Child Correction Homes as required and develop the infrastructure and further the capacity of the existing Child Correction Homes and notify the court on a biennial basis to preempt the circumstances to detain children with adult detainees as a clear contravention to the section 42, 44 and 50 (1) of the Children's Act and for the successfully implementation of the said Act. "

