

**TORTURE OF WOMEN IN DETENTION**  
**Nepal's Failure to Prevent and Protect**

**26 June 2011**



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**Advocacy Forum, Nepal**

## **Torture of women in detention: Nepal's Failure to Prevent and Protect**

First Edition 2011 (2067 v.s.)

### *Publisher*

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### *Layout and Cover Design*

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Printed at Kathmandu, Nepal

# Contents

<b>Preface</b>	ix
<b>Executive Summary</b>	1
<b>Introduction</b>	5
<b>Chapter I – Analysis of patterns of torture of women in detention</b>	7–12
1. <i>Trends</i>	7
Recent trends	
Long term analysis 2006-2010	
Caste Group and ethnic background	
District level trends	
Charge	
2. <i>Methods of Torture</i>	9
<b>Chapter II – Torture and sexual violence in detention during the conflict</b>	13–24
1. <i>Patterns of torture against women during the conflict</i>	13
Torture by security forces	
Torture by Maoists	
Rape and sexual violence	
2. <i>The State's responsibility to investigate and prosecute human rights violations committed during the conflict</i>	18
Obstacles in access to justice for conflict victims	
Failure to provide information on how to access justice	
Specific obstacles to reparations during the conflict	
Lack of cooperation by authorities	
The gender dimension of transitional justice	

Nepal Action Plan on the Implementation of UN Security  
Resolutions 1325 and 1820  
Transitional justice mechanisms

<b>Chapter III – Preventing torture and handling complaints</b>	25–36
1. <i>Preventive mechanisms: detention monitoring</i>	25
The National Human Rights Commission	
Lack of implementation of NHRC recommendations	
Internal and functional problems	
No real use of its mandate	
Office of the High Commissioner for Human Rights	
National Women’s Commission	
2. <i>Lack of independent investigations into cases of torture</i>	29
The Human Rights Police Unit	
3. <i>Obstacles to reparations</i>	30
Unsystematic medical check-ups	
Legal obstacles	
35 day statute of limitations	
Burden of proof	
<b>Chapter IV – International framework and regulations</b>	37–42
1. <i>Concerns from UN treaty bodies and special procedures</i>	37
The Universal Periodic Review	
Treaty bodies	
Special procedures	
2. <i>Vulnerability of women in the criminal justice system –     implementing international standards and preventive mechanisms</i>	40
<b>Chapter V – Government continuing failure to uphold obligations,     despite some positives</b>	43–59
1. <i>Insufficient safeguards</i>	43
Insufficient implementation of existing legal safeguards	
Failure to notify of legal basis of detention	
Access to legal counsel	
Right to family visits	
2. <i>Reducing the risks of torture of women in detention</i>	45

Lack of separation between women and men	
Lack of female police officers	
3. <i>Impunity</i>	48
De jure impunity	
Lack of criminalization of torture	
Laws providing immunity	
De facto impunity	
Shortcomings in implementing decisions of courts and statutory bodies	
Lack of implementation of court decisions under Torture Compensation Act (TCA)	
Lack of implementation of NHRC recommendations	
Reaction of the State to complaints: lack of political will	
Withdrawal of political cases	
Reaction of the government to criticism	
4. <i>Lack of due diligence</i>	55
Women's access to justice	
Nepal's strategy to fight Gender Based Violence	
<b>Conclusion and recommendations</b>	61–62
<b>Annexes</b>	63–70



## Preface

AF has been at the forefront of adopting integrated intervention measures to reduce the prevailing practice of torture in Nepal by promoting a system of accountability against torture since its establishment in 2001. Based on the idea that regular visits to all places of detention are one of the most effective ways to prevent torture, AF has been visiting 67 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 collaborates with 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. In addition to lobbying for the ratification of OP-CAT, we also work for the capacity building of judges, police, public prosecutors, defense lawyers and medical doctors by organizing regular trainings on the Istanbul protocol and consultations meetings on different issues related to criminal justice.

AF advocates for the systematic implementation of protection mechanisms and safeguards to reduce the risk of torture and ill-treatment in detention. These include, among others, making sure procedures and standards relating to women in detention are followed and institutionalizing human rights and gender trainings in the Police.

Every year, marking the UN International Day in Support of Victims of Torture, AF publishes a report based on the information collected during visits to detention centers with the objective of providing impetus for further reform. This year, we have dedicated this report to women victims of torture and ill-treatment in detention. The lack of criminalization of torture, the widespread impunity and the obstacles in accessing justice for women victims of human rights violations is a threat to women's well-being and security. The aim of this report is to call on the Government of Nepal to exercise due diligence to prevent, investigate and punish acts of torture against women in detention and work towards improving the conditions of detention for women.

We would like to extend our sincere thanks to H  l  ne Sabaton, Bhagwati Gautam, Amber Raut, Kopila Adhikari, Om Prakash Sen Thakuri, Kathryn MacDonald, Badri Bhusal, Padma Giri, Sumitra Rai, Pushpa Poudel, Babin Pokharel and Dhiraj Kumar Pokhrel for conducting necessary research for this report. Special thanks to H  l  ne Sabaton for drafting the report and Ingrid Massage for her brilliant editing job. We would also like to thank AF custody monitors and attorneys for their invaluable contribution.

Finally, we would also like to thank our colleagues Dhurba Kumar Shrestha, Om Prakash Sen Thakuri and Bindesh Dahal for translating the report into Nepali.

Thanks go to all the individuals who offered assistance, analysis, or information that made this report possible. We particularly wish to thank the women who shared their experiences with us. We also express our sincere gratitude to all judges, public prosecutors, police officials, the Human Rights Cell of Nepal Police and the Armed Police Force, as well as members of the NHRC, NWC and OHCHR-Nepal for their continuous support and assistance.

**Mandira Sharma**  
Advocacy Forum

## Executive Summary

During 2010, on average an estimated one in ten women detained by police was reported to have been subjected to torture or ill-treatment in 67 government detention facilities regularly visited by AF attorneys in 20 districts in which it operates. There is however a sharp increase of nearly 90 per cent when comparing the first half of the year with the latter. Between July and December 2010,, 13.9% of women reported they were tortured or subjected to ill-treatment (compared to 7% in the first half of the year).

In Kathmandu District, the level of torture of women is above 20%, twice the national average and is at the same level as reported during the conflict. Chiefly among the victims of torture are women from the Terai ethnic group.

Most torture and ill-treatment takes place during interrogation at District Police Offices (DPOs) though the use of private houses as secret places of detention emerged during 2010, especially in Kathmandu District. A substantial number of women detainees report that they were tortured by women police officers, who sometimes torture detainees at the behest of their male colleagues or superiors. Advocacy Forum has also documented acts amounting to torture inflicted by members of the United Communist Party of Nepal (Maoist) (UCPN-M), including members of the party's youth wing, the Young Communist League.

There have been some encouraging developments during 2010. For instance, the government passed a National Action Plan on Gender-Based Violence and a National Action Plan on Women, Peace and Security, individual district courts awarding compensation to women victims of torture and a police officer responsible for the rape of a woman in custody was arrested. However, Advocacy Forum believes that these actions will remain isolated and fail to impact on the wider prevailing impunity unless and until the Government of Nepal makes torture a crime and puts in place measures to prevent torture from happening.

Though the draft Penal Code submitted to the Legislative Parliament in 2011 provides for 5 years' imprisonment as a maximum punishment for torture, the code does not incorporate many specific preventative measures, and there remains a need for a separate detailed Act relating to torture. At the time Nepal's report under the Universal Periodic Review process of the United Nations Human Rights Council was adopted on 7 June 2011, the Nepal government stated that it is "finalizing a bill on criminalizing torture in line with the CAT". Such promises have been made repeatedly since Nepal ratified the Convention against Torture in 1991. It is hoped that the government will finally deliver on its promises, more than 20 years later.

This report also focuses on torture, including rape, of women during the conflict. Among the victims are some members of the Constituent Assembly, one of whom provided a first-hand account of the torture inflicted on her by the army in 2001. Other women described to Advocacy Forum the torture suffered at the hands of the UCPN-M.

As impunity continues to prevail, women victims of torture and rape are finding it impossible to obtain justice. They face numerous barriers, including the lack of criminalization of torture, strict statutes of limitation on complaints relating to rape (in criminal cases) and torture (in civil cases) and the courts not accepting contemporaneous evidence. To add to this, the rape victims have not been included in a government scheme to provide "interim relief" to conflict victims.

There are also concerns that the National Human Rights Commission (NHRC) is not given the investigation of torture enough priority, and has not focused on the situation of women in detention. Similarly, the Office of the United Nations High Commissioner for Human Rights in Nepal (OHCHR-Nepal) has not prioritized visits to places of detention after it renegotiated its mandate with the government in 2010. There is some hope that the National Women's Commission may be able to pressurize the government into action on behalf of women detainees.

In October 2010, the United Nations adopted the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also referred to as the "Bangkok Rules". Advocacy Forum is urging the Government of Nepal to implement the safeguards set out in these rules, and thus working to prevent torture of women in detention and increase the women's general well-being.

*Recommendations relating to women in detention*

1. Recognize the particular risk of abuse that women face in pre-trial detention and adopt appropriate measures in policies and practice to guarantee women's safety during the time they spend in police custody.
2. Initiate independent investigations into all reports of torture and other ill-treatment against women and bring those responsible to justice.
3. Ensure that women in detention are systematically detained separate from men.
4. During arrest, transfer and detention, a female officer should be present. In accordance with the Standard Minimum Rules for the Treatment of Prisoners, women in detention should be supervised by women staff.
5. Enhance the internal accountability of police and implement clear procedures and standards to be followed regarding women in detention.
6. Ensure that all women detainees, while being processed for detention, are informed of their rights, including the right to consult a lawyer.
7. Ensure that all women detainees, while being processed for detention, are informed of their rights, including the right to consult a lawyer. Provide for a comprehensive procedure to ensure health check-ups are compulsory, confidential and undertaken by physicians trained in the Istanbul Protocol procedures.<sup>1</sup> Women detainees should be examined by women doctors in private without the presence of police.

*Recommendations relating to torture in general:*

8. Introduce comprehensive legislation to criminalize torture as a matter of priority.
9. Put in place an effective and impartial mechanism for the prevention and investigation of torture.
10. Ensure all detainees are kept at official places of detention only and that any public official responsible for detaining people in private houses is disciplined.
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.

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<sup>1</sup> The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) available at <[www.ohchr.org/Documents/Publications/training8Rev1en.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf)> accessed on 29 April 2011.

Public officials who prevent authorized persons from inspecting or monitoring detention facility shall be subject to penalties as prescribed by the Act.

12. Criminalize enforced disappearances and ratify the Convention against Enforced Disappearances.

## Methodology

Advocacy Forum regularly visits detention facilities in 20 of the country's 75 districts, in the absence of systematic monitoring by government and other agencies. Unless indicated otherwise, the data and specific case studies contained in this report arise from the original interviews conducted in the 67 detention facilities in these 20 districts regularly visited 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 the victims many times. Interviews were conducted with the full consent of the interviewees and as far as possible in private. In any event, where there is any risk of reprisals, the identity of the women 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.

## Introduction

The purpose of this report is to examine the situation regarding torture and other ill-treatment against women in detention during the “people’s war” and in the current transition period toward democracy. During the conflict, both the security forces and the Maoists used torture and sexual violence as weapons to terrorize and punish women. Today, torture against women in detention is mainly used as a means to obtain confessions.

In 1991, Nepal ratified both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women. Despite this fact, since the end of the “people’s war” in 2006 almost 13% of women kept in detention claim to have suffered torture or other ill-treatment, and the level of torture has increased during the past two years. Though women in detention are less tortured than men, these figures remain unacceptable.

The report further examines the Government’s failure to protect women from violence, and questions its political will to address the ongoing impunity since the end of the civil war that has denied a large number of women their right to truth, justice and reparation. In 2010, the Government of Nepal has vowed to tackle violence against women in the private sphere by “promoting zero tolerance” in the framework of its Action Plan on Gender Based Violence. How the Government intends to address violence against women by state actors, and promote accountability for past violations remains to be seen.



## Analysis of patterns of torture of women in detention

### 1. Trends

#### *Recent trends*

In 2010, Advocacy Forum visited 345 women in detention. On average, 10.4% reported they were tortured. This represents a general decrease in comparison with 2009, when 13.7% of women claimed they were tortured in detention.<sup>1</sup>

However, from July to December<sup>2</sup> there was a sharp increase in the percentage of custodial torture against both women and men. The torture of female detainees increased from 7% during the period from January to June 2010 to 13.3% in the period from July to December 2010.

In the period from July to December 2010, 25 women out of 188 interviewed (13.3%) reported that they had been severely beaten by investigating officers and had been treated without consideration for the rights and needs of women as a particularly vulnerable group. From January to June 2010, only eleven women out of 157 (7%) had claimed they were tortured. This represents an increase by nearly 90%.<sup>3</sup>

#### *Longer-term analysis 2006-2010*

From 2006 to 2010, Advocacy Forum visited a total of 1108 women in detention. On average, 12.3% (136 women) claimed that they were tortured or subjected to ill-treatment. There

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<sup>1</sup> In 2007 and 2008 10.2% of women claim they were tortured

<sup>2</sup> Advocacy Forum, "Recent Trends and Patterns of Torture in Nepal, Briefing, July to December 2010" <http://advocacyforum.org/downloads/pdf/publications/Briefing-July-to-Dec-2010-final.pdf>

<sup>3</sup> See Table 2 in Annex

was a sudden decrease in the year following the conflict (between 2006 and 2007), when the percentage fell from 21% to 10.2%. There has been an overall decrease in the number of women tortured since the end of the conflict. In 2006, 21% of women claimed they had been tortured, a figure which decreased to 10.4% in 2010.

### *Caste Group and ethnic background*

Data analysis on the basis of caste and ethnic background shows that during 2010 women from Terai ethnic groups were particularly vulnerable to torture.

The majority of women in detention belong to the Brahmin and Chhetri caste groups, which represented 40.7% of the women detainee population in 2010. Women belonging to Terai ethnic groups represented 9.4% of the women detainee population in 2009 and 7.8% in 2010. They reported very high levels of torture in 2009 and 2010. In 2009, 22.8% of women belonging to Terai ethnic groups claimed they had been tortured (though only representing 9.4% in the women detainee population) and in 2010 22.2% of women who reported torture or ill-treatment in detention were from the Terai community (though only representing 7.8% in the women detainee population).<sup>4</sup>

### *District level trends*

The level of torture has increased in the past year in the district of Kathmandu. Though 2009 saw a positive decrease in the number of women detainees tortured in the district - 9.6% in 2009 compared to 17.9% and 17.5% in 2007 and 2008 respectively. In 2010, 20.8% of women detained in Kathmandu claimed they had been subjected to torture or ill-treatment. This is similar to the level of torture reported by women in Kathmandu during the last year of the conflict (20.5% of women reported torture in Kathmandu in 2006).

The increase of reports of torture of women in Kathmandu coincides with an increase in reports of the use of private residencies as secret places of detention. The existence of these “safe houses” is being kept under wraps even among police personnel. Sources within the police justify the practice by claiming they are used to avoid leaks and prevent the media from “hampering the investigations”. The unlawfulness of these detentions is of serious concern. Suspicions of extortion by the police have been confirmed by individuals forced to pay for their release.<sup>5</sup>

<sup>4</sup> For an analysis on the basis of caste and ethnic background, see Table 3 in Annex

<sup>5</sup> Nepal National Weekly Special Report, 19 December 2010, Vol.11. No.18

Among those held at these “safe houses” have been several women:

*Following her arrest under allegations of theft and drug smuggling on 31 October 2010, Hermin Ratu Lama was repeatedly beaten and tortured in different locations including in a private house in Sanepa, Lalitpur District, along with her husband and another individual. Hermin was forced to lie down on the floor and one of the policemen stepped on her knees, another grabbed her hair and another policeman beat her on the soles of her feet. She was bleeding from her nails and toes. Verbally abusing her, the police officers also tore her clothes. She was crying in agony. Her husband could not bear to see the torture of his wife and said that he was ready to confess to anything and sign any paper. All three individuals were taken to custody for remand on 2 November 2010 – they had not been given a detention letter during the first three days of their detention during which they had been tortured.*

### **Charge**

During the period 2006-2010, the three most common charges against women who were tortured were public offense (7.4%), drugs (14.6%) and murder (10.4%). The group of women who were tortured most frequently (when comparing charges) is women against whom subsequently no actual charges were brought and who were released. Altogether, such women make up 17.5% of the total number of women claiming they were tortured.<sup>6</sup>

## **2. Methods of Torture**

The following methods of torture were reported by women during the last three years:

- Beating with sticks and bamboo sticks on hips, back, thighs, shoulders and hands
- Beating with strips of rubber from a tire and plastic pipes on back, buttocks, hands and legs
- Beating on the soles of feet with sticks and plastic pipes and bamboo sticks then forcing women to jump up and down
- Beating with bottles filled with water
- Slapping on cheeks
- Punching (back, head and face)
- Kicking (back, chest, head and thighs)

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<sup>6</sup> See Table 4 in Annex for a more detailed analysis of torture on the basis of charge

- Stamping on/stepping on body while being forced to lie down
- Pouring water over hooded head (“waterboarding”)
- Pulling hair
- Death threats
- Forced to go down on hands and knees
- Abusive language
- Treats of more beatings, electric shocks and rape
- Forcing detainees to witness the torture of other detainees/ spouse

*Specific methods against women*

- Rape
- Forced to undress
- Threatened to put *sisnu* leaves (nettles) in vagina
- Beating with sticks on sensitive parts

*Lack of consideration for pregnant women or women detained with children’s special needs*

Advocacy Forum has noted that in a great number of detention centers, no specific measures were taken to accommodate pregnant women or women detained with small children. Among others, detention centers in Udayapur, Kaski, Bardiya, Kathmandu, Jhapa and Ramechhapdo not provide additional medicine or clothes to pregnant women. Further, in the majority of cases, pregnant or breastfeeding women were not provided with prenatal check-ups or adequate diets. The Bangkok Rules (see Chapter IV for more details) include provisions regarding pregnant women in detention in relation to personal hygiene “the accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, [...] and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.” Further, the Interim Constitution guarantees for “Every woman [to] have the right to reproductive health and other reproductive matters”.

*Rama Sris, 19, was 9 months pregnant at the time she was arrested on 25 January 2008, following a dispute between her husband and his employer. Rama started feeling uneasy as soon as she was taken to the District Police Office (DPO). She informed the officers that she was pregnant, but they accused her of pretending. In the evening, she paid 60 rupees for dinner but was not provided any water. There were only a few blankets available though it was freezing cold. In the morning of 26 January she started to go into labor. The police scolded her instead of taking her to the hospital, and refused to call a doctor. In the end, as Rama was about to collapse the police called two nurses but they refused to deliver the baby in the DPO. Only then they did the police allow Rama to be taken to the hospital, but it was too late - she lost the baby.*

### ***Mahima Kusule***

*Ms. Mahima Kusule, 26, was arrested by the police on 14 July 2010 under suspicion of theft. On 14 July, she was told to go to the Satdobado Police Office to identify two suspects accused of stealing NRs 60,000 from her neighbor's house. She went there and found that the police had arrested two boys. The police tried to force her to accuse the two boys but she refused. She was taken to the Dolakha DPO, where the police tried to force her to confess to stealing the money herself, but she refused to confess. At around 6pm Mahima was brought home. The police searched her house but found nothing.*

*The following day she reported to the DPO as she had been ordered to and was detained on suspicion of stealing the money. At around 9pm two policemen took her to the Litigation Section saying that "criminals do not accept the crime unless they are tortured". There were two plainclothes policemen and two policewomen. They allegedly tied her hands with a piece of jeans cloth, inserted a bamboo stick between her knees and hands and propped her legs up. According to the victim, ASI Rajiv K. C. ordered to beat her. Head Constable Ms. Nirmala Pokhrel beat her on the soles of her feet with a black plastic pipe with a rod inside for about 20 minutes ordering her to confess to the crime. They threatened to apply electric shocks if she did not confess. According to the victim the same policewomen beat her 5 or 6 times on her hands, 5 or 6 times on her thighs and 5 or 6 times on her shin with the same black plastic pipe. Accusing her of stealing the money the same policewoman slapped her 4 times on her cheeks. The policemen scolded her, saying that they would kick her like a football if she were a man. As she could not bear the pain of torture she cried loudly and then only did they untie her hands but then made her jump all over the room for about 15 minutes. Due to the pain on the soles of her feet, she walked slowly but could not jump as she was ordered to. Then they said, "It's enough for today. If she does not confess we will torture and apply electric shocks tomorrow." Then they kept her in the detention cell. She could not sleep for the whole night and cried a lot. On 15 July 2010, she was released on condition that she would report to the DPO at 10am the following day.*

*On 16 July 2010 AF arranged for her medical treatment. The doctor diagnosed mental disorder, prescribed medicine and referred her for a psychiatric consultation. On 26 July 2010, she was taken to the hospital in Kathmandu.*

*Mahima filed a complaint under the existing Torture Compensation Act. On 22 May 2011 the District Court, Dolakha issued an order to provide Rs. 15,000/- compensation to the torture victim and advised the perpetrators not to torture detainees in future. The court did not order for any departmental action to be taken against the police officers involved, despite the victim naming several of them.*

Rape and other sexual violence in police custody is suspected to occur regularly, but few women speak out about it. In March 2010, one case was reported prominently in the media. It involved an Indian national, SafinaKhatun.

### ***Safina Khatun***

*SafinaKhatun, 18, was raped by a Police Sub-Inspector in Janakpur, Dhanusha district. On 19 March 2010, Safina and her husband eloped to Nepal to get married. Safina was handed over to the police by four men who accused her of being a sex worker at approximately 9 pm on 19 March 2010. She and her husband talked to the Sub-inspector BaburamJha for a long time. Later, he put her husband in one room and then took her to the room where he usually slept, all the time telling her that she was like his daughter. After taking her to his room in the police barracks, the sub-inspector started to take off her trousers. She began to scream. He then bound her mouth with a shawl and tied both her hands to the bed. Then, he raped her for an hour. After an hour he gave her some clothing to wear but kept her original clothes. Safina and her husband were released at around 5 or 6 am.*

*The victim and her husband informed some young men at the railway station about the rape and the news was broadcasted by a local radio. A riot broke out at the police station and the sub-inspector was beaten by the crowd.*

*The victim filed a First Information Report (FIR) against BaburamJha in the DPO Dhanusha and the case was taken to Dhanusha District Court. The District Court remanded the accused, who was sent to Sarlahi District Prison. He filed a case against the decision of the District Court at the Appellate Court. The latter upheld the decision of the District Court. A further appeal against the decision of the District and Appellate Courts is pending in the Supreme Court. Safina and her husband are thought to have left Nepal.*

## Torture and sexual violence in detention during the conflict

During the “people’s war”, women suffered from torture, rape and sexual violence at the hands of the security forces and the Maoists. The flaws in collecting evidence, stigmatization and fear of retaliation by the warring parties have contributed to making violence against women during the conflict a largely under-reported phenomenon.<sup>1</sup>

### 1. Patterns of torture against women during the conflict

Over the period 2001 – 2006, Advocacy Forum has documented 41 cases of rape.<sup>2</sup> However, due to the difficulties and obstacles in accessing victims, particularly those detained in army barracks, it is estimated that this only represents approximately 10% of cases.<sup>3</sup>

#### *Torture by security forces*

According to a study by Advocacy Forum on torture during the last year of the conflict, the most commonly used methods of torture by the Royal Nepal Army (RNA, now Nepal Army) included blindfolding for long periods of time, administering electric shocks, suffocating

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<sup>1</sup> “While other conflict-related human rights violations, such as enforced disappearances, killings and torture, were widely reported and fairly systematically documented, the issue of sexual violence has been largely ignored by national and international organizations as well as national institutions such as the National Human Rights Commission”. Advocacy Forum and the International Center for Transitional Justice, “Across the Lines: the Impact of Nepal’s Conflict on Women”, p. 45.

<sup>2</sup> Advocacy Forum, “Sharing experiences of Torture Survivors”, p. 2, 26 June 2006, <http://www.advocacyforum.org/downloads/pdf/sharing-experiences-of-torture-survivors.pdf>

<sup>3</sup> Advocacy Forum, “Torture still continues, A brief report on the Practice of Torture in Nepal” 26 June 2007, <http://www.advocacyforum.org/downloads/pdf/publications/26-June-publication.pdf>

victims by pouring water into their nose and mouth, hanging victims upside down, rape and sexual abuse, piercing needles under nails, burying women alive, forcing victims to stay in uncomfortable positions, tying hands and feet around a stick and swinging the victim's body around, random beatings, mock executions and death threats.<sup>4</sup>

Generally, the most commonly used methods of torture by the police in detention during the last year of the conflict included beatings on the soles of feet with plastic pipes, rolling muscles of thighs and random beatings.

### *Bishnu Maya Tamang - (CA Member)*

*Bishnu Maya Tamang (name changed) and her husband were both Maoist supporters. In 1998, her husband was killed. On 30 December 2001 she was arrested by the army along with two women friends. They were detained in the Army barracks in Phulbari, Pokhara. As soon as they arrived, a group of soldiers began beating them. They kicked and beat them and Bishnu Maya fell to the ground and was unconscious for a while. High ranking officers came and kicked her with their steel-capped boots. They stamped on her thighs while she was on the ground. They also beat her with plastic pipes which had iron rods inserted and with the butts of their guns all over her arms.*

*She and her friends were kept there for 26 days, during which she was beaten every day, three times a day, often until she fell unconscious. Sometimes she was blindfolded and handcuffed during the torture. One day, the women were told to take off their clothes and were forced to lie down on the ground, then some officers rubbed the women's entire bodies with nettles 5 or 6 times. Her son was also arrested by the army, and kept in the same barracks. She could hear her son screaming as he was being tortured. The army frequently came and told her they had killed her son. They interrogated her while they tortured her, asking her where she had hidden weapons, and where her Maoists friends were. She repeatedly told them she did not know but they did not listen.*

*They were then taken to the APO Bagar; and then to the district prison in Kaski. Her son and a friend were shot at by the army while they were detained at the barracks. The girl was killed, but Bishnu Maya's son survived.*

*One of her relatives filed a Habeas Corpus petition with the Appellate Court in Kaski and she was released on 19 May 2005. Immediately upon her release, she was arrested again by a joint security force team (RNA, Nepal Police and Armed Police Force) in Nawalparasi district. They put her in a room and kicked her "like a football". She was handcuffed and had bruises all over her body. She was detained with two other women and two other men. Under the blazing heat*

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<sup>4</sup> Ibid.

*the security forces forced the detainees to carry bags filled with bullets. They were given hardly any food and made to work very hard. While they were carrying the bags Bishnu Maya was kicked. One night all five of them had to sleep in a very small goat shed without food. She was so tired and sick and hungry and said she could not work anymore. One soldier called someone on the telephone and said "there is one woman here who refuses to work". The next day, they were all blindfolded, put in a helicopter and taken to the Army Barracks in Ramnagar Rupandehi where they were kept for 19 days, then taken to the DPO Rupandehi. The two women detainees had not been able to change their clothes. The police officers kept verbally abusing them, telling them "go and have food and then come and sleep with us". One evening, as they were bathing and washing their clothes, police officers came and said "now we are going to kill you". They took them back inside but did not do anything. After several months she was released, rearrested and sent back to the DPO then to prison in Kapilvastu where she was detained for a further 4 months. She was finally released on 16 May 2006.<sup>5</sup>*

### **Torture by Maoists**

AF has documented 64 cases of torture (of both men and women) and 4 cases of rape committed by the Maoists during the period 2001-2006. The wives and family members of the army were particularly targeted.<sup>6</sup> During the last year of the conflict the most commonly used method of torture by Maoists was beatings with heavy objects, often resulting in broken bones.

*Kopila Sunar (name changed) 38, was abducted by Maoists in Kapilvastu district on 2 September 2005 and released after more than 2 years on 14 December 2007.*

*On 2 September 2005 at around 5.45 pm 3 Maoists came and ordered Kopila to come with them for questioning regarding the death of her uncle. She followed them and was kept overnight. At around 9 pm the next day she was locked in a room, interrogated by two individuals, Dhakal and Ghurahi. When she pleaded her innocence, they forced her to lie on a bed in the room and started to beat her with sticks on her back while questioning her. During the torture the sticks broke and they changed them. She was questioned and tortured for almost 2 hours. Dhakal said, "Your husband is not in the house. Your uncle might have you sleeping with the goons of the village. So, you along with your boyfriend might have killed him. Now Ghurahi will sleep with (rape) you." When her relatives came looking for her, the Maoists gave them a stick ordering them to beat her but they refused. Dhakal got angry and beat one of her relatives on*

<sup>5</sup> Interview with Bishnu Maya Tamang, CA Member, Kathmandu, 1 June 2011]

<sup>6</sup> Advocacy Forum and the International Center for Transitional Justice, "Across the Lines: the Impact of Nepal's Conflict on Women".

*his back with the same stick. Kopila was forced to lie on her back on the cot and stretch her legs wide open by putting a broken stick between both knees. After that they stepped on her legs asking about the murder case for about half an hour.*

*She was then released and went home. Later, young boys came to her house and told her to go with them. Her 4 children followed her. She was forcefully snatched from her children and taken to a room. Maoists cadres Sushila, Kiran, Ghurahi and other 2 unidentified girls forced her to lie with her back on the floor. They put her legs on a wooden log and four of them (two each end of a wooden log) rolled the wooden log on her shins. Sushila stepped on her chest and others beat her with iron rods on her palms and the soles of her feet while questioning her. She pleaded her innocence but they continued to beat and question her. The torture continued for about 1 ½ to 2 hours. She cried for water but they did not give her any. She thought she would die of thirst.*

*On the third day (5 September 2005) the same team of Maoists cadres again rolled a wooden stick on her shin. They beat her with iron rods and sticks on various parts of her body. They tortured her for about 2 to 2 ½ hours. The torture was so severe she fell unconscious. Later she realized that the Maoists had applied salt and chili powder on her wounds. On 9 September 2005 she was suffering from high fever and blood and pus was oozing out of the wound on her left leg. She was kept in a house in Gharbhudiya for 20, 22 days. The Maoist girls guarding her forced her to sign a confession and she was then sent to do forced labor.*

*The following day she was taken to Baniyabhar in Shivgadhi VDC. The Maoists gave her a sickle and said, "Get to work. No work, no food." She had to cut paddy and provide water to the Maoist cadres. She was taken to the jungle along with the Maoists to flee from the army, then to a house where she worked for 6 months and finally to a Maoists camp in Bijgouri where she was kept for almost 1 ½ year.*

*On 14 December 2007 she was finally released. On 7 April 2008 some Maoists gave her Rs. 7000/- as compensation for her earrings and wrist watch they had seized. She has not reported the complaint to any institution and has not received compensation or support from any government and other institutions.*

## **Rape and sexual violence**

Over the period 2001 – 2006, Advocacy Forum alone documented 41 cases of rape committed by both security forces and Maoists.<sup>7</sup> Based on the interviews conducted by AF and ICTJ, it can be inferred that the security forces, particularly the RNA, often committed sexual violence, including rape, as a deliberate strategy.<sup>8</sup>

<sup>7</sup> Advocacy Forum, "Sharing experiences of Torture Survivors", 26 June 2006.

<sup>8</sup> Advocacy Forum and the International Center for Transitional Justice, "Across the Lines: the Impact of Nepal's Conflict on Women", p. 49.

Pre-existing research backed by Advocacy Forum's findings suggests that the most egregious acts of sexual violence during the conflict were committed by the RNA following their initial deployment in November 2001 and by the Nepal Police when it operated under the unified command of the RNA between 2003 and 2006.<sup>9</sup>Rape and sexual violence were used as a tool to punish and silence women suspected of supporting the Maoists. Advocacy Forum has documented 25 cases of rape committed by the RNA from July 2001 to April 2006, 4 by the Maoists and 12 by the Nepal Police and Armed Police Force. In total, AF has documented 96 cases of rape during the conflict.

One woman provided the following testimony:

*"In 2005, the members of the RNA arrested me for the fourth time from my home. First they took me to the Barmajhiya Camp and subsequently to several different camps which I cannot name as I was handcuffed and blindfolded all the time. When I talked, they would hit me with sticks and rods. I was punched on my face and kicked on sensitive parts like breasts and sexual organs. They also inserted pins under my nails and verbally abused me. They only gave me a little rice and chili to eat and kept me in a room which was wet, sandy, and swarming with mosquitoes.*

At around 12 midnight, they would come and rape me in the room. They would come in a group, sometimes 10, 12 or 15. They would remove the chains of my hands and legs, strip me naked, but would rarely remove the blindfold so that I would not be able to see them. Then they would rape me turn by turn. In the morning, they would bring back my clothes. I do not know for how many days they raped me like that. Due to the rape, I now suffer from vaginal bleeding, sometimes every other day, sometimes six or four times a month. My body, eyes, head and limbs have not yet recovered."<sup>10</sup>

## Sexual Violence

While arbitrary detention and torture during the conflict have been well documented by different human rights organizations in Nepal, there is little documentation on sexual torture and harassment of women detainees by the security forces. However, research findings indicate notable levels of sexual torture of women and girls. Advocacy Forum has

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<sup>9</sup> Advocacy Forum and the International Center for Transitional Justice, "Across the Lines: the Impact of Nepal's Conflict on Women", p. 47.

<sup>10</sup> Advocacy Forum and the International Center for Transitional Justice, "Across the Lines: the Impact of Nepal's Conflict on Women", p. 52.

documented some cases in which women detainees were gang-raped or raped multiple times by the members of the security forces.

The RNA and Nepal Police tortured and harassed women in detention, by inserting foreign objects (such as guns or sticks) into their vagina, walking on their bodies wearing heavy boots, punching and kicking on sensitive areas such as breasts and genitals, applying electric shocks to genitals or breasts, raping detainees while they were blindfolded with their hands and feet bound, forced nudity, use of vulgar language and threats of sexual abuse.<sup>11</sup>

*Sarika Pokhrel (name changed), 17 at the time of the incident, was tortured by the army in 2001. A joint security forces patrol came to search her village in Sonaha, Bardiya district. Three RNA personnel came to her house and 2 of them went inside. She was scared of them and of what they would do to her. They asked her if she provided food and shelter to the Maoists. She denied and one of them slapped her on her cheek. She felt pain in her ear. She could not hear for some time and thought that they were going to kill her. She told them that she had given birth to a child lately and asked them to leave. She was very scared and she was shivering. She could not say anything and stood still. One of the army personnel asked her to open her blouse. She did not speak or move. They threatened her and said if she did not open it, they would kill her. She was scared and started to unbutton her clothes. One soldier threatened her and told her to unbutton her clothes completely. Then, one of the army personnel came near her and looked at her sensitive parts, and left. She thought that he would rape her. They went out and called her outside, then asked her the same question and she denied. They warned her that she should not support the Maoists or they would kill her. She was in fear for a long time and was scared whenever she saw soldiers.<sup>12</sup>*

## **2. The State's responsibility to investigate and prosecute human rights violations committed during the conflict**

In addition to the absolute prohibition of torture in all circumstances including during armed conflict in Article 2 of the Convention against Torture and Article 7 of the International Covenant on Civil and Political Rights<sup>13</sup>, the Geneva Conventions to which Nepal is a party contain safeguards regarding women detained during conflict.

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<sup>11</sup> Ibid.

<sup>12</sup> Advocacy Forum, "Sharing Experiences of Torture Survivors", p. 9.

<sup>13</sup> Both of which have been ratified by Nepal.

*Obstacles in access to justice for conflict victims**Failure to provide information on how to access justice*

Lack of information on how to seek justice was a significant obstacle during the conflict. Women were not aware of the procedures to be followed and the information to be provided. Seeking compensation and filing a complaint was particularly difficult for certain victims who have not preserved evidence such as medical certificated or photographs of wounds.<sup>14</sup>(See Chapter III on Obstacles to reparations)

*Specific obstacles to reparations during the conflict*

One of the particular obstacles faced by both men and women during the conflict was the widespread practice of incommunicado detention. It was raised as an issue of concern by the Special Rapporteur, who referred to “a large number of allegations relating to persons taken involuntarily by security forces and who are being held incommunicado at unknown locations.”<sup>15</sup>*The absence of written proof of the detention has enabled perpetrators to evade justice and has deprived victims of compensation:*

*Mainya Tamang was arrested on 7 November 2004 by the Police of Ward Police Station of Boudha, Kathmandu. Following her arrest she was taken to the ward police office where she was detained for two days illegally and was severely beaten and tortured. On 9 November 2004 she was transferred to Kalimati Women’s Cell where she was beaten again. On 11 November 2004 the police prepared a paper showing that she was arrested that day and produced her before the District Court of Kathmandu for remand. On 27 December 2004, Advocacy Forum filed a case on her behalf demanding compensation for torture. Her case was quashed both in the District Court and on appeal in the Appellate Court as both Courts said that at the time when she claims that she was tortured, there was no evidence to prove that she was in detention.<sup>16</sup>*

<sup>14</sup> Advocacy Forum and the International Center for Transitional Justice, “Across the Lines: the Impact of Nepal’s Conflict on Women”, p. 79.

<sup>15</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, E/CN.4/2006/6/Add.5, 9 January 2006.

<sup>16</sup> Advocacy Forum, “Sharing experiences of Torture Survivors”, 26 June 2006, p. 5.

*Lack of cooperation by authorities*

During the conflict and thereafter, relevant authorities have been extremely uncooperative to initiate investigations into complaints of human rights violations. The police routinely refused to accept complaints (First Information Reports, FIRs), and even when ordered to conduct investigations by the Supreme Court, have failed to do so.

In the case of SaralaSapkota, despite constant lobbying by Sarala's father and human rights organizations<sup>17</sup> and an order by the Supreme Court to investigate, no genuine investigation has been conducted.

*Sarala was arrested around 11 p.m. on 15 July 2004 by a group of 12 armed soldiers at her grandfather's house. The family, who witnessed the arrest, stated that soldiers gave Sarala no reason for her arrest. After her arrest, Sarala's family went to Baireni barracks and the DPO in Dhading, but all the officials denied her arrest and detention. Sarala's father then filed an application with the NHRC on 26 July 2004 asking them to investigate the "disappearance." The family received no information about Sarala for over 16 months. On 11 January 2006, an NHRC team, including forensic experts, exhumed Sarala's body from a place near her village. Sarala's father confirmed the clothes and slippers found belonged to his daughter.*

The police filed a FIR on 28 June 2006, but have not carried out a proper investigation. On 2 November 2007, BhaktaBahadurSapkota, Sarala's father, made an application to the Supreme Court seeking an order against the DPO and the district public prosecutor office in Dhading requiring them to carry out an investigation. The hearings on the mandamus application were continuously postponed. A petition seeking a prompt police investigation went unheard by the court. In May 2010, the Supreme Court finally ordered the Dhading DPO to investigate the case but the order has led to no action on the part of the police.<sup>18</sup>

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<sup>17</sup> Human Rights Watch and Advocacy Forum, "Waiting for Justice, Unpunished Crimes from Nepal's Armed Conflict", September 2008, p. 70.

<sup>18</sup>TejshreeThapa, "Human Rights Fantasy in Geneva", The Kathmandu Post , 16 February 2011, <http://www.ekantipur.com/the-kathmandu-post/2011/02/16/oped/human-rights-fantasy-in-geneva/218520.html>

## The gender dimension of transitional justice

### *Nepal Action Plan on the Implementation of UN Security Council Resolutions 1325 and 1820*

On 17 February 2011, the Government of Nepal announced the launch of a National Action Plan on Women, Peace and Security to implement UN Security Council (UNSC) resolutions 1325 and 1820.<sup>19</sup> Both UNSC resolutions focus on violence against women in armed conflict. UNSC resolution 1325<sup>20</sup> includes provisions regarding participation of women in peace-building and security (See Chapter V) but also calls on states parties to respect and implement international law with respect to protecting women and girls. Further, it calls on all parties to a conflict to implement special measures in order to protect women in armed conflict. UNSCR 1325 also emphasizes the responsibility of all states to “put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls”.<sup>21</sup> UNSC resolution 1820<sup>22</sup> focuses on sexual violence specifically and stresses that “sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security.”<sup>23</sup> It also urges state parties to “comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.”<sup>24</sup> Nepal’s National Action Plan (NAP) on the implementation of both UNSC resolutions is based on five focus areas, namely participation; protection and prevention; promotion; relief and recovery; and resource management and monitoring and evaluation. The NAP not only recognizes women and children as being the most affected during the conflict but further acknowledges that “women also suffered from sexual violence during

<sup>19</sup> National Action Plan on Implementation of the United Nations Security Council Resolution 1325 & 1820, Government of Nepal, Ministry of Peace and Reconstruction Singhadurbar, Kathmandu, 1 February 2011.

<sup>20</sup> Resolution 1325 (2000), Adopted by the Security Council at its 4213th meeting, on 31 October 2000, S/RES/1325.

<sup>21</sup> *Ibid*, para. 11.

<sup>22</sup> Resolution 1820 (2008), Adopted by the Security Council at its 5916th meeting, on 19 June 2008, S/RES/182.

<sup>23</sup> *Ibid* para. 1.

<sup>24</sup> *Ibid* para. 4.

the conflict as well as during the transition period due to a weak law and order situation".<sup>25</sup> Regarding investigation of human rights violations against women during the conflict, the NAP declares "The issue of taking action against the perpetrators in crimes including sexual violence against women during the past armed conflict is very challenging. There is a need to take legal action against those involved in different crimes during the conflict period, and improve the conflict affected women and children's access to justice".<sup>26</sup> In order to do so the NAP cites the need to introduce a transitional justice mechanism to carry out investigations into acts of violence against women that took place during the conflict and the need to make "necessary amendments in the existing laws and formulate new laws".<sup>27</sup> However, with regard to prosecuting perpetrators of human rights violations against women during the conflict, the NAP remains very vague. It provides no concrete provisions to fight against impunity, with the exception of a mention of the Truth and Reconciliation Commission – which has however been used as an excuse to justify the ongoing impunity for crimes committed during the conflict and postpone prosecutions.<sup>28</sup>

### *Transitional justice mechanisms*

The basis for establishing a Truth and Reconciliation Commission in Nepal is set out in the CPA.<sup>29</sup> There are severe delays in the adoption of the Truth and Reconciliation Bill as well as the Disappearances Commission Bill. This is partly due to campaigning by civil society for changes to the text of the bill, which at the outset provided the Commission with powers to recommend amnesties. The government finally registered the Truth and Reconciliation Commission Bill and Disappearances Commission Bill on 17 February 2010 and both were tabled in Parliament on 15 April 2010. At the time of writing, they are being considered by the Legislative Parliament. The Draft Bill for the TRC includes rape and sexual violence in the category of "serious violations of human rights".<sup>30</sup> The list of crimes for which "no

<sup>25</sup> National Action Plan on Implementation of the United Nations Security Council Resolution 1325 & 1820, Government of Nepal, Ministry of Peace and Reconstruction Singhadurbar, Kathmandu, 1 February 2011, para. 3.

<sup>26</sup> Ibid, p. 7, para. 6.2.

<sup>27</sup> Ibid, p. 7, para. 6.2.

<sup>28</sup> Advocacy Forum, "Avoiding accountability by hook and by crook. The issue of amnesty in post-conflict Nepal", June 2011, p. 9 to 14.

<sup>29</sup> CPA Article 5.2.5: Both sides agree to constitute a High-level Truth and Reconciliation Commission through mutual agreement in order to investigate truth about those who have seriously violated human rights and those who were involved in crimes against humanity in course of the war and to create an environment for reconciliation in the society.

<sup>30</sup> *Truth and Reconciliation Commission Draft Bill, Section 2 (j) (6)*.

recommendations for amnesty shall be made to a person involved”<sup>31</sup> includes rape and sexual violence. This is in line with UNSCR 1820 which explicitly “stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes”.<sup>32</sup>

The Standards for Economic Assistance and Relief for Conflict Victims approved in 2008 by the Council of Ministers were designed to provide guidelines for the distribution of “interim relief” for two years following its approval and set out general guidelines about who were considered “conflict victims”.<sup>33</sup> The Standards include specific directives to provide assistance to particular categories of “conflict victims”. None of these provisions mention rape and sexual assault as a violation and many women victims have so far not received any assistance under this scheme.<sup>34</sup>

The devastating impact of disappearances on the victim’s family is recognized in the UN Declaration on the Protection of all Persons from Enforced Disappearance.<sup>35</sup> The Human Rights Committee has also found that in cases of enforced disappearances, the family of the disappeared can also be considered victims of torture, or cruel inhuman or degrading treatment under article 7 of the International Covenant for Civil and Political Rights.<sup>36</sup>

The impact of disappearances on the family of the disappeared was insufficiently taken into account in the Directives to Provide Relief to the Families of the Disappeared in 2009. Most people subjected to enforced disappearance in Nepal were men, so that the families left behind are mainly composed of women and children. The peculiar characteristics of a disappearance, in which the final whereabouts of the victim remain unknown, make the mourning process more difficult.<sup>37</sup> The “interim relief” system ensures that the wives of

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<sup>31</sup> Ibid. 25 (d).

<sup>32</sup> Resolution 1820 (2008), Adopted by the Security Council at its 5916th meeting, 19 June 2008, S/RES/182, para. 4.

<sup>33</sup> For more information regarding the Standards, see Advocacy Forum, “Discrimination and Irregularities, the Painful Tale of Interim Relief in Nepal”.

<sup>34</sup> Ibid.

<sup>35</sup> Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, article 1 (2), “Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families.” The Declaration has not yet been ratified by Nepal.

<sup>36</sup> UN Human Rights Committee, *Quinteros v. Uruguay*: “the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of article 7.”

<sup>37</sup> Advocacy Forum and the International Center for Transitional Justice, “Across the Lines: the Impact of Nepal’s Conflict on Women”, p. 61.

victims who died are entitled to the single women subsistence allowance and up to three of their children are provided educational stipend until they are eighteen. In contrast, this does not apply to the families of the people disappeared by the state during the time of conflict.

## Preventing torture and handling complaints

### 1. Preventive mechanisms: detention monitoring

There is currently no nationwide mechanism to monitor places of detention although several bodies, including the NHRC, have a mandate to do so. They have not prioritized these activities. In the absence of systematic monitoring, Advocacy Forum has developed a program of monitoring places of detention. It is currently in operation in 20 of the country's 75 districts: Baglung, Banke, Bardiya, Dhanusha, Dolakha, Jhapa, Kanchanpur, Kapilvastu, Kathmandu, Kaski, Lalitpur, Morang, Myagdi, Parbat, Ramechhap, Rupandehi, Siraha, Sunsari, Surkhet and Udayapur. In total, Advocacy Forum currently visits 57 places of detention on a regular basis. The data used in this report was collected during these visits. Given the long-term consistency with which the patterns have emerged, Advocacy Forum is confident that the figures are a fair representation of the prevailing reality relating to torture in Nepal but acknowledges that in the absence of a nationwide monitoring mechanism they cannot be determinative but just suggestive.

#### *The National Human Rights Commission*

The NHRC has a mandate to conduct monitoring of detention centers. However, the NHRC rarely makes use of this mandate. Its powers to recommend further action if human rights abuses are found are limited, both legally and practically, making it somewhat of a "toothless tiger".

Detention monitoring by the NHRC is carried out "when required":<sup>1</sup> visits take place once a year, though only to major detention centers, and are carried out by regional offices. The

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<sup>1</sup> Advocacy Forum - NHRC interview, 10 May 2011.

practice however seems to concern jails rather than pre-trial detention. According to the NHRC, the lack of monitoring of women in pre-trial detention can be explained by the low number of complaints which in turn are due to fear, general reluctance to filing complaints with police and lack of awareness regarding rights and procedures to file complaints.<sup>2</sup>

There are concerns about proposed changes to the legal framework applicable to the NHRC. Currently, the 1997 NHRC Act sets out the Commission's powers. After the NHRC was made a constitutional body in 2007, there were attempts to draft a new law. Concerns regarding the National Human Rights Commission Draft Bill<sup>3</sup> have been voiced by several human rights organizations.<sup>4</sup> There are particular concerns that the bill narrows the detention monitoring mandate of the NHRC. This change of mandate is worrying in light of the number of complaints received by Advocacy Forum relating to torture in pre-trial detention. Under its current mandate, the NHRC "can enter any government premises or other places, without prior notice".<sup>5</sup> In contrast, the draft bill stipulates that the NHRC can only carry out detention monitoring in "prisons", a setback to the Commission's powers. Further, the draft bill should be amended to ensure the NHRC has clear powers to investigate the practice of detaining and interrogating suspects in private houses.

### *Lack of implementation of NHRC recommendations*

According to an NHRC report, the Commission received a total of 10,507 complaints, of which around 3000 were investigated, the remaining 7000 or so cases were dismissed. The main reasons for dismissal of complaints are lack of circumstantial evidence (victims are often unable to identify the perpetrators), the lengthy process of investigations which causes some people to lose interest, change their minds or leave the country, which results in the NHRC dropping the case. Once the investigation is completed, the NHRC issues three types of recommendations: compensation, departmental action and prosecution (see Chapter V on prosecution and compensation). Out of a total of 386 recommendations issued

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<sup>2</sup> Advocacy Forum - NHRC Interview, 10 May 2011.

<sup>3</sup> The Draft Bill of the National Human Rights Commission with regard to its functions, duties, powers and working procedures ("Bill") was drawn up in cooperation between the NHRC and the government in 2007 and registered with the Legislature Parliament in August 2009. The Bill is still pending. However, on 24 August 2009 a different version of the bill was submitted to the Legislature Parliament by the coalition government of Prime Minister Madhav Kumar Nepal.

<sup>4</sup> National Human Rights Commission – Nepal and OHCHR – Nepal "Observations on the National Human Rights Commission Bill 2009", Open Dialogue on Draft Legislation Series 2, January 2011.

<sup>5</sup> NHRC Act, Section 9(e).

by the NHRC since 2000, only 8.8% were fully implemented. Regarding torture only 14% of recommendations have been implemented by the Government.<sup>6</sup> However, the number of recommendations made by the NHRC regarding torture is significantly low. Since 2001, only 30 recommendations for compensation relating to torture were issued, less than the total number of cases Advocacy Forum has transmitted to the NHRC in the past year.

### *Internal and functional problems*

In addition to the lack of implementation of its recommendations, the NHRC suffers from internal problems which hinder its functioning as an impartial and independent body. The Commission is now a constitutional body as set out by the Interim Constitution. According to the NHRC, this new status makes it more difficult for the government to curtail its mandate. However, it also provides the Government with a higher level of control over its staff, which is now partly recruited by the Government thus reducing the Commission's autonomy and impartiality.

### *No real use of its mandate*

Part of the NHRC's mandate enables it to publicize the names of perpetrators. The NHRC has not yet made use of this power mainly as it considers this would amount to blacklisting which "should only be used as a last resort".<sup>7</sup>

The NHRC Act provides for a three months deadline following which the concerned body should take action or send a report to the NHRC justifying the absence of any action upon NHRC recommendations.<sup>8</sup> Despite the many recommendations issued years and months ago, the Government has not yet given any explanation for the lack of implementation – which the NHRC sees as "lack of sincerity" – though it is rather evasive on its own lack of efforts towards enforcing the implementation within the set deadline.

### *Office of the High Commissioner for Human Rights*

The OHCHR's initial mandate in Nepal gave the organization access to any places of detention without prior notice. When the mandate was renewed in June 2010, these powers were

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<sup>6</sup> National Human Rights Commission, "Summary Report of National Human Rights Commission (2000-2010) NHRC Recommendations upon Complaints in a Decade".

<sup>7</sup> Advocacy Forum – NHRC interview, 10 May 2011.

<sup>8</sup> National Human Rights Commission Act, Section 13(4).

curtailed and the office now has to obtain prior permission to visit places of detention. In addition, the new mandate resulted in the closure of OHCHR's field offices. Officially, OHCHR defines the switch as a strategic change from "preventive monitoring" to "reactive monitoring".<sup>9</sup>As a result, monitoring is only carried out for "emblematic" or "serious cases" and the Office's main objective is now reinforcing the capacity of the NHRC.

### *National Women's Commission*

The National Women's Commission (NWC)'s monitoring role is rather limited and has, up until now, focused very little on detention. It has however carried out visits to several detention centers throughout the country.<sup>10</sup> Firstly, the NWC noted the infrastructure was not "gender friendly". The NWC remarked for example that in several instances, women detainees were kept with men. The Commission also expressed concern regarding the lack of women police officers present in the small number of police stations that they visited. During these visits, the NWC only conducted interviews with police officers present at the detention centers – no interviews were carried out with the detainees themselves.<sup>11</sup>

The NWC has done little work on individual complaints of torture in custody. However it has conducted an investigation in the case of SafinaKhatun, an Indian woman who was raped in custody (see above). The NWC conducted a field observation on the case, but failed to establish what happened, mainly due to the fact that the victim returned to India (see Chapter I for details on this case).

According to the NWC, this case was widely publicized due to the fact that the victim was an Indian national. The stronger media attention may also explain why they initiated an investigation in the first place. The NWC conducted an investigation in the Janakpur detention center where the women police officers present allegedly told them of other cases of sexual violence which are unreported.<sup>12</sup>The NWC has included these findings in its annual report which was sent to the Office of the Prime Minister in February 2011. As of May 2011, no response has been received.<sup>13</sup>It seems the NWC is faced with the same problems as the

<sup>9</sup> Advocacy Forum - OHCHR Interview, 10 May 2011.

<sup>10</sup> According to the NWC website, the Commission has carried out detention monitoring in 5 police stations and one prison between 2009 and 2010. This was confirmed during an AF interview with NWC Chairperson, 18 May.

<sup>11</sup> Advocacy Forum - NWC interview, 18 May 2011.

<sup>12</sup> National Women's Commission Annual Report, 2009-2010.

<sup>13</sup> Advocacy Forum - NWC Interview, 18 May 2011.

NHRC: the vast majority of its recommendations, which are mostly on government policy towards increasing women's rights and participation, are not acted on.<sup>14</sup>

## **2. Lack of independent investigations into cases of torture**

In addition to the lack of systematic monitoring mechanisms, there are serious concerns about the lack of independent investigations into complaints of torture. During 2010, Advocacy Forum has transmitted 79 individual complaints to the NHRC, AG Office and Police Units in the Nepal Police. This number however bears no relation to the actual number of victims supported by Advocacy Forum: in 2010, only a fifth of cases - 7 out of 36 – of torture against women were transmitted to these bodies as cases are only submitted with the consent of victims. The large majority of victims are afraid of filing an official complaint as they fear reprisals and/or do not trust the independence or good faith of the Human Rights Unit. No answers from these agencies have been received as of early June 2011.

### *The Human Rights Police Unit*

Established in 2003, the Human Rights Unit of the Nepal Police is mandated to investigate abuses perpetrated by the police against detainees and during police operations.

The Human Rights Unit's standards of investigation have been questioned by AF several times in the past, their normal procedure being limited to sending a letter based on information received from Advocacy Forum or other organizations to the relevant DPO, without conducting their own investigation and interviewing the victims.

The Nepal Police Human Rights Unit claims that during 2008/2009 departmental actions were taken against 44 police personnel for violating human rights during police operations and in detention, including against six senior officers. The Unit further claims that since its establishment, departmental action was taken against a total of 552 police personnel for human rights violations - among them were 83 senior officers.<sup>15</sup> Advocacy Forum's request for more information regarding the outcome of the investigations into the complaints it filed with the Unit as well as regarding cases of disciplinary action taken against police personnel since 2003 have not been successful. The Human Rights Unit referred Advocacy Forum to the Home Ministry claiming that they do not have the authority to disclose this information.

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<sup>14</sup> Ibid.

<sup>15</sup> Nepal Police Website <http://www.nepalpolice.gov.np/en/human.html>

In 2010, Advocacy Forum has transmitted 7 cases of women tortured in detention to the Human Rights Unit of the Police. On 16 August 2010 AF was invited to a meeting with In charge of HR Unit SP Yadav Raj Khanal and Inspector BishwaAdhikari and requested them for responses. SP Yadav Raj Khanal informed Advocacy Forum that the Human Rights Unit is conducting investigations into the cases sent by Advocacy Forum and is preparing responses. However, as of early June 2011, no responses have been received.

No independent body conducts prompt and impartial investigations into human rights violations committed by the Police. In the few cases investigated and concluded by the NHRC, recommendations were sent to the Office of the Prime Minister, who has then proceeded to forward it to the relevant Ministry – in the case of police violations, to the Home Ministry – who then transmits the case back to the Police for action. This amounts to policemen investigating their own colleagues thus significantly undermining the impartiality of the investigation process.<sup>16</sup>

### *Nepal Police Women & Children Service Center (WCSC)*

Nepal police has also established the Women and Children Service Center (WCSC) as per the recommendation of the Police Reform Commission in 1995 with professed objective to Investigate, document and maintain database on crime related to women and children at central as well all in district level. As a pilot project, five women cells were established in 1996 (Police Headquarters -1 and DPO's in Kathmandu, Lalitpur, Kaski and Morang Districts). In February 2007, the government created permanent posting for the WCSC in all five regions, 14 zones and 38 districts.

In December 2008, the center was upgraded as a Directorate and currently it works in 72 districts. However, the WSCS has its separate buildings in 13 districts (Kathmandu, Lalitpur, Kavre, Nuwakot, Sindhupalchowk, Jhapa, Morang, Sunsari, Makwanpur, Chitwan, Kaski, Rupendehi and Nawalparasi). Five WCSC's buildings are under the process of constructing with the help of Asian Development Bank in Doti, Jumla, Bara, Rauthat and Dhanusha districts. Under the WSCS, Border Women and Children Service Desks have been established at 9 points (Kakadbhitta, Jogbani, Raxual, Belihawa, Jamuna, Trinager, Gaddachauki, Tatopani and Tribhuvan International Airport-Kathmandu). Despite its wider coverage, the center fails to make its presence felt.<sup>17</sup>

<sup>16</sup> Advocacy Forum - NHRC Interview, 10 May 2011.

<sup>17</sup> A research conducted by United States Institute of Peace shows that 9775 (82%) out of 11909 respondents had never heard about the center. See United States Institute of Peace, "Security and Justice in Nepal: Citizens' Perspectives on the Rule of Law and the Role of the Nepal Police", p. 96.

The data procured from the WSCS Directorate shows that work of the WSCS's is satisfactory in dealing with gender-based violence committed by civilians in that the center documented 1076 cases of rape and supported the victims involved between 2008 and 2010.<sup>18</sup> Besides rape and attempt to rape, the cases documented and processed by the WSCS include trafficking, abortion, polygamy and child marriage. However, the WSCS data doesn't mention about rape and torture committed by police and other security agencies. Though a major initiative to protect rights of women and children, its relative obscurity and its apparent failure to document the cases of the state agents makes it work pale into insignificance. Advocacy Forum feels that the WSCS can be a major weapon to protect women and children from being tortured in police custodies if it is mandated to oversee the violations by state agents as well.

### 3. Obstacles to reparation

#### *Unsystematic medical check-ups*

The Torture Compensation Act, 1996 (TCA) is greatly lacking as a preventative mechanism. It provides that: "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."<sup>19</sup> In other words, if no doctor is available to provide medical examination, the TCA enables a police officer to carry out the examination. In addition, when taking a detainee to the doctor, police often remain present during the medical consultation, preventing an open and confidential consultation with the physician.

During the period 2006-2009, 18.9% of women detainees were not provided with medical check-ups. In 2010, 12.8% of women detainees interviewed by AF did not have access to health check-ups which represents an improvement compared to the previous year (14.8% were not provided check-ups in 2009). Overall, the number of medical examinations has decreased during the year for both women and men: during the first half of 2010, 90% of detainees received medical check-ups. 84.1% were provided with medical check-ups during the second half.<sup>20</sup>

<sup>18</sup> Data procured from WSCS Directorate.

<sup>19</sup> Section 3 (2) Torture Compensation Act 1996.

<sup>20</sup> See Table 5 in Annex.

Further, even when check-ups are accessible, they are considered a formality and often not conducted thoroughly, partly due to the lack of training of health professionals in detecting and diagnosing symptoms of torture or ill-treatment:

*AmodaSapkota (name changed), 20-years-old, was arrested on 21 April 2009 at 10 pm. She was taken for questioning regarding a murder case to the APF camp, Beldangi-2 refugee camp, Jhapa District. She was blindfolded and taken to a room where she was made to lie down on her back on the floor while two APF men stepped on her thighs and shins and a third one beat her on the soles of her feet with a bamboo stick questioning her about the murder. She was beaten on the soles of her feet for 10 to 15 minutes, while she was continuously crying and pleading her innocence. At last she was able to pull her legs up and hid them under her body. She was verbally abused and tortured by male policemen. On 23 April 2009 she was taken to the APF camp in Pathibhara Gan, Padaguji. Her face was hooded with a piece of cloth. SI Ganga Rai made her lie on the floor and beat her for 5 minutes on her legs and knees. The torture stopped for a while as they questioned her about the incident. She claimed her innocence. Two APF officers caught her hands from two sides and poured water into her nose and mouth. Asking her about the murderer they poured water into her nose and mouth for 2, 3 minutes continuously. She had difficulties breathing. She then told them what she knew about the murder. The torture stopped. At around 5 pm they took her to the Area Police Office (APO), Damak.*

*Medical examination:*

*On 22 April the police took the victim to the Amda hospital in Damak for a medical check-up. However, the doctor only checked whether she had drunk alcohol or not. She complained of low blood pressure but the doctor did not pay attention. On 31 January 2010 she registered an application in the District Court, Jhapa under Section 5(3) of the TCA through the District Jail Office, Jhapa seeking an order in the name of DPO, Jhapa to provide her with a physical and mental check-up listing the details of torture and its effects on her.*

*On 2 February 2010, the case was presented before the bench of Justice Shaligram Koirala. The Court ordered that as torture had not been mentioned during the investigation, when she was taken to court for remand or when presented to court with her statement, there was no need to order a physical and mental check-up under the TCA.*

The above case also points to the lack of initiative on behalf of judges to prevent torture and order investigation and facilitate reparations for torture. AmodaSapkota was not asked by the District Court judge whether she had been tortured. Though the number of judges who have asked women detainees whether they had been tortured or ill-treated has increased since the end of the conflict, it remains highly insufficient. In 2006, 5.3% of women detainees

taken to court were asked whether they had been tortured – a proportion which progressively increased to 10.8% in 2010.<sup>21</sup>

Further, female detainees are regularly taken to hospital for medical check-ups with male detainees. Due to the lack of female doctors, especially in district hospitals, they are frequently examined by male doctors. This situation makes it even more difficult for them to describe their medical problems in any detail, further resulting in weak and incomplete medical reports.

### *Legal Obstacles*

#### *35 day statute of limitations*

The TCA stipulates that a victim of torture must file a complaint “within 35 days from the day the torture is inflicted on him or the day he has been released from custody.”<sup>22</sup>This significantly hinders the victim’s access to justice. Often due to the psychological impact of torture, victims need time to recover before seeking legal recourse. Further, it means that perpetrators only need to ensure the silence of victims for 35 days during which victims are often threatened (including with re-arrests) and otherwise intimidated. This is worsened by the lack of any protection mechanisms for victims.<sup>23</sup>

#### Rape

The 35 day statute of limitation also applies to the filing of complaints to police (so-called First Information Reports, FIRs) to ensure police investigations in cases of rape.<sup>24</sup> The immediate physical and psychological damage caused by an act of sexual violence can render a victim unable to file a complaint within the narrow window afforded to them by this restriction. This strict regulation is thus a violation of a woman’s right to remedy, enshrined in all major international human rights treaties and specifically in in Article 2(3) of the International Covenant for Civil and Political Rights (ICCPR).<sup>25</sup>

<sup>21</sup> See Table 6 in Annex.

<sup>22</sup> Section 5, Torture Compensation Act 1996.

<sup>23</sup> Advocacy Forum, “Hope and Frustration, Assessing the Impact of Nepal’s Torture Compensation Act – 1996” , 26 June 2008, p. 27.

<sup>24</sup> Muluki Ain – 2020, Chapter on Rape, Section 11 provides, “In rape case the case should be filed within 35 days.”

<sup>25</sup> Nepal ratified the ICCPR on 14 May 1991.

In 2008, the Supreme Court of Nepal has passed a directive order for the Government to review the law in order to extend the statute of limitation on rape in article 11 of the Country Code. The Court considered that the 35 day statute of limitation should be amended due to the fact that the social inequality and illiteracy of a great number of victims were likely to dissuade them from filing complaints within the limited timeframe.<sup>26</sup> Although this directive has not been implemented to date, and the legislation has not been reviewed or amended, it is possible for lawyers to challenge the 35-day statute of limitations for past sexual violence cases, including those that occurred during the conflict, based on the fact that the Supreme Court has already declared it unreasonable.

Further, the Supreme Court's issued a decision made on the writ filed against the 35 days statutory limitation to file the rape case:

In a mandamus application, writ no: 0402 filed in 2006, in the case of Bhumisara Tharu (name changed) against Prime Minister and Office of Ministers the Supreme Court issued a directive order to increase the 35 day statutory limitation to 6 months but to date the government has not implemented the order. Instead, a 3-month statutory limitation in rape cases is proposed by the government in a draft Criminal Procedure Code submitted to Parliament in early 2011.

Regarding rape and sexual violence, police officers have shown very little commitment to filing reports. Instead of taking a case to court, the police put pressure on the victim to marry the person who raped her, and then withdraw the charges against him.

The 35 day statutory limitation has also been used as a ground to dismiss cases by individual district courts.

Ms. Malika Jha (name changed), a 15-year-old orphan at the time of the incident, resident of Kamalamai Municipality-11, Bhiman, Sindhuli district claimed she was raped by two soldiers on 2 June 2006. According to the victim, two soldiers blindfolded her and raped her. One of them took off her blindfold after the rape and identified himself as Saroj Thapa. Her uncle,

<sup>26</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation in Nepal, Human Rights Council Sixteenth session, A/HRC/16/23, p. 14 para. 57.

who is a lawyer, helped her in filing a case on 2 August 2006. At first the police refused to register the case citing the statutory limitation but later they did so, feeling sorry for the victim. Due to lack of evidence of rape and to the inability to identify the perpetrator with certainty (the Police when investigating in the nearby army barracks was told there was no soldier named SarojThapa), the District Court, Sindhuli dismissed the case citing the statutory limitation. The girl's young age, the fact she did not have any support contributed to the fact that she did not file a complaint immediately.

### *Burden of proof*

The Evidence Act of 1974 places the burden of proof on the victim by stating "the burden of proving the guilt of the accused in a criminal suit shall lie on the plaintiff."<sup>27</sup>

The TCA does not establish an authority to investigate torture cases in the event victims file a civil suit, thus leaving the burden of proof firmly on the victim, who is solely responsible for proving that torture occurred.<sup>28</sup> However, the Police routinely keep victims in detention and use certain techniques to prevent obvious signs of torture (such as bruising) from showing:

*Saraswati Gurung, 24, and Indra Kala Gurung, 37, were arrested together with their relative on 3 February 2010 on charges of abduction for ransom of Indra's brother-in-law. They were taken to the Metropolitan Police Crime Division (MPCD) in Kathmandu and beaten with rubber pipes and bottles filled with water. Indra was beaten several times on her back, her thighs, her knees and her palms with a thick plastic covered wire and she had to keep an uncomfortable position (kneeling). Both Indra and her relative reported that Inspector Bhisma Humagai beat them more than the other policemen. Indra also reported that another policeman (not identified by name) present at this time, aimed a pistol at her forehead and said "I too have a pistol like you." He then hit her on her back and head with his fist. The next morning, on 4 February 2010, all three victims were taken to a room and Inspector Bhisma Humagai beat them again asking them to tell him who else was involved in their crime. Indra reported that then two policemen beat her hands with a rubber pipe several times and had her sit on her knees and maintain this position for half an hour. Her palms were swollen and the policemen ordered her to roll her palms on a stick to prevent the blood from clotting. Saraswati said that she was beaten on her hands with a plastic pipe and ordered to roll them on a stick to prevent the blood from clotting as well.*

<sup>27</sup> Evidence Act, 1974, Chapter 4, Section 25.

<sup>28</sup> Advocacy Forum "Hope and Frustration, Assessing the Impact of Nepal's Torture Compensation Act 1996", 26 June 2008, p. 32.

*Indrareported that on 6 February 2010 she was kept in a room in the MPCD. Inspector BhismaHumagai, the man she had abducted, as well as other inspectors and an army official were present. An inspector ordered her to stand against a wall and beat her with a rubber pipe on her thighs and on her hands several times. He scolded her. The torture lasted for about half an hour.*

*The three victims were remanded for five days on 8 February 2010 and for another seven days on 15 February 2010. When interviewed by Advocacy Forum on 10 February 2010, Indrareported that she was suffering from hyperventilation and trauma, nightmares, sleepless nights and was under a lot of mental stress. She was not in contact with her family. Later that day the three detainees were brought to the Bir Hospital for a medical check-up but reported that they did not dare to talk about the torture. The doctor did not ask them whether or not they were subjected to torture. The doctor prescribed some medicine but the policemen did not let them buy the medicines, denying their right to receive medical treatment.*

*The three victims submitted an application for a physical and mental check-up before the court on 24 February 2010. The court stated on 25 February they should be taken to Thribuwan University Teaching Hospital and be provided medical treatment within three days. However the police did not comply with this order, and did not provide the victims with access to medical facilities during their time in detention. At the final hearing the judge did not verify whether the order was complied with. Indraand her relative were released on 4 March 2010. Only then they were able to seek medical treatment.*

*They filed a case under the TCA on 5 April 2010. On 6 May 2011, in both Saraswatiand Indra'scases the court gave decisions that the evidence was not sufficient to prove torture.*

It has been repeatedly observed during detention visits that detention registers are not systematically updated despite advocacy by various actors, including the Special Rapporteur on Torture.<sup>29</sup> The police use two registers: one lists the name of detainees before remand and the other after remand. Lawyers and the public do not have access to registers in all districts. As the police are legally entitled to detain a person for 24 hours, they often do not register the names of arrested/detained persons immediately and if someone is released without charge after a short period of detention (which could exceed 24 hours), their names often do not feature in police registers. (See case of MainyaTamang, Chapter II)

This significantly increases the risk of torture, as it enables the police to detain suspects for a longer period of time. It also enables police officers to circumvent the obligation to present detainees to an "adjudicating authority" within 24 hours of arrest.<sup>30</sup>

<sup>29</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Civil and Political Rights, Including: The Questions of Torture and Detention, Mission to Nepal, U.N. Doc. E/CN.4/2006/6/Add.5 (9 January 2006), recommendation e.

<sup>30</sup> 24(3) Interim Constitution 2007.

## International Frameworks and Regulations

### 1. Concerns from UN treaty bodies and special procedures

The ongoing failure by the Nepal authorities to effectively address torture and other ill-treatment, including sexual violence against women in detention has repeatedly raised concern at the international level. The overall lack of prevention mechanisms against torture and the absence of any concrete investigations into cases of torture or sexual violence against women detainees have been among the main concerns highlighted by the UN treaty bodies as well as special procedures of the UN Human Rights Council (HRC).

#### *The Universal Periodic Review*

In January 2011, Nepal underwent its first Universal Periodic Review. Torture and discrimination against women featured prominently among the concerns raised by member states. Several countries condemned police brutality and torture as well as the use of unlawful arrests and detention<sup>1</sup>, despite Nepal's ratification of the Convention against Torture.<sup>2</sup> Member states also underlined the absence of accountability for past and current use of torture in custody.<sup>3</sup> Improving access to justice, conducting impartial investigations into allegations of torture and implementing a system of accountability to investigate and prosecute human rights violators in Nepal's military and law enforcement agencies<sup>4</sup> in

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Human Rights Council Seventeenth session, A/HRC/17/5, 8 March 2010, Sweden recommendation, para 83.

<sup>2</sup> Ibid, Denmark recommendation, para. 80.

<sup>3</sup> Ibid., Denmark recommendation, para. 80.

<sup>4</sup> Ibid, United States of America, recommendation, para. 107.24.

order to bring perpetrators to justice was a central aspect of discussions.<sup>5</sup>Further, with regards to women, the issue of discrimination was defined as a grave obstacle to the enjoyment of human rights.<sup>6</sup>Most of these concerns voiced by members states were considered as “implemented or in the process of being so” by the Government. However, regarding the issue of implementing recommendations<sup>7</sup> contained in a 2010 OHCHR report<sup>8</sup>, in particular the establishment of external oversight mechanisms, such as an independent police complaints commission or special investigative unit to investigate and prosecute crimes allegedly committed by State actors, Nepal “objected to that report in its totality”. According to the final Report of the Working Group on the UPR, the Government stated it “believes that the existing complaints mechanism on the conduct of security forces is independent.”<sup>9</sup>

### *Treaty bodies*

The Committee against Torture, in its Conclusions and Recommendations after examining Nepal’s report during its 35<sup>th</sup> session expressed concern regarding the widespread use of torture and ill-treatment by law enforcement personnel, referring to “exceedingly large number of consistent and reliable reports concerning the widespread use of torture and ill-treatment”. Further, regarding interrogation and detention, the Committee condemned the frequent use of interrogation methods by security forces that are prohibited by the Convention against Torture. The Committee stated:

*“The State party should ensure that procedures are in place to monitor the behavior of law enforcement officials, and should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. The State party should provide to the Committee a list of cases of gender-based violence and abuse against women and children in custody that have been investigated and prosecuted, and the perpetrators punished.”<sup>10</sup>*

<sup>5</sup> Ibid, Austria recommendation para. 107.17.

<sup>6</sup> Ibid, Sweden, recommendation, para. 83.

<sup>7</sup> Ibid, Czech Republic, recommendation, para. 109.14.

<sup>8</sup> OHCHR – Nepal, “Investigating allegations of extra-judicial killings in the Terai”, OHCHR-Nepal Summary of Concerns July 2010, p. 11.

<sup>9</sup> Report of the Working Group on the Universal Periodic Review, Nepal, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Human Rights Council Seventeenth session, United Nations General Assembly, A/HRC/17/5/Add.1, 1 June 2011, para. 108.15.

<sup>10</sup> Committee against Torture Conclusions and Recommendations, Committee against Torture Thirty-fifth session, CAT/C/NPL/CO/2, 13 April 2007, para. 27.

*Special Procedures*

Follow-up reports to the UN Special Rapporteur against Torture's visit to Nepal in 2005 submitted to the HRC have also continuously addressed the issue of torture and ill-treatment of women in detention. Indeed, the former Special Rapporteur Manfred Nowak has consistently reiterated his concern regarding the ongoing torture, ill-treatment, sexual harassment and abuse of women during detention, referring to several cases of women being beaten and tortured in custody.

In 2009, the Special Rapporteur against Torture's report to the 10<sup>th</sup> Session of the HRC cites the Government's response to a case in which three women accused of theft were reportedly arrested and severely tortured in police custody in May 2008.<sup>11</sup> The Government denied the arrest, detention and torture of these women had ever occurred, stating that "None of the accused were arrested, detained or tortured by the police except for them being asked in public about the whereabouts of the stolen amount. The allegations of torture are not true and do not correspond to the reality of the case."<sup>12</sup> However, Advocacy Forum has evidence that the women were in detention. Further cases of torture in custody have been raised by Special Procedures since then: in 2010, the Special Rapporteur's report presented at the 13<sup>th</sup> Session of the HRC includes the cases of at least 6 women human rights defenders assaulted and beaten by police officers for staging a demonstration outside a police station. This case was sent as a joint appeal by several Special Procedures including the Special Rapporteur on violence against women, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.<sup>13</sup> More recently, the current Special Rapporteur on Torture Juan Mendez refers in his latest report to the HRC to Mahima Kusule's case (See Chapter I), who was tortured in custody in July 2010. The veracity of the case was denied by the Government of Nepal, which went as far as qualifying Ms Kusule's case as "baseless, fabricated and hypothetical."<sup>14</sup> This however is strongly contradicted by the District Court of Dolakha's decision, on 22 May 2011, to provide Rs. 15, 000/- compensation to the torture victim.

<sup>11</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Summary of Information, Including Individual Cases, Transmitted to Governments and replies received, A/HRC/10/44/Add.4, 17 February 2009, para. 164.

<sup>12</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/13/39/Add.1 25 February 2010, para. 201.

<sup>13</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Communications to and from Governments, A/HRC/14/22/Add.1, 2 June 2010, para. 251.

<sup>14</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/16/52/Add.1, 1 March 2011, para. 153.

## 2. Vulnerability of women in the criminal justice system – implementing international standards and preventive mechanisms

Nepal's treatment of prisoners falls short of international standards on many levels. The Standard Minimum Rules for the Treatment of Offenders<sup>15</sup>, adopted in 1955 by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, in addition to the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment<sup>16</sup>, adopted in 1988 by the UN General Assembly remain the main points of reference regarding the evaluation of detention conditions. The lack of gender-specific measures in both sets of rules as well as a general recognition of the special needs of women in the criminal justice system led to the adoption in December 2010 of the United Nations Rules for the Treatment of Women Prisoners and non-Custodial Measures for Women Offenders or "Bangkok Rules".<sup>17</sup> All three non-treaty standards contain an authoritative set of internationally recognized human rights standards and offer guidance to improve national legislation and policies. The Rules, despite their non-binding status provide guidance on reducing the risk of torture against women in detention. Far reaching reforms are required if Nepal is to abide by these principles.<sup>18</sup>

Several provisions in the Bangkok Rules refer to the critical exposure to torture, sexual harassment and abuse faced by women in detention, with a view to reducing the risk. The risk is first recognized for all categories of women in detention in Rule 2, which refer to their "particular vulnerability" upon admission. Rule 56 further identifies pre-trial detention as specifically dangerous: "The particular risk of abuse that women face in pre-trial detention shall be recognized by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time."<sup>19</sup>

<sup>15</sup> Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>16</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988.

<sup>17</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Sixty-fifth session, Third Committee, Crime prevention and criminal justice, United Nations General Assembly, 6 October 2010.

<sup>18</sup> Nepal NGO Coalition Submission to the United Nations Universal Periodic Review Tenth session of the UPR Working Group of the Human Rights Council, July 2010. [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/NGOCoalitions\\_JointSubmission-eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/NGOCoalitions_JointSubmission-eng.pdf)

<sup>19</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Sixty-fifth session, Third Committee, Crime prevention and criminal justice, United Nations General Assembly, 6 October 2010, rule 56.

In Nepal, discriminatory laws and practices are generally regarded as posing a serious threat to women's security and well-being including within the criminal justice system. Indeed, women's socio-economic dependency has a direct impact on their vulnerability in detention with illiteracy, poverty and general marginalization leading to a lack of awareness of rights, which in turn increases the risk of ill-treatment. The Special Rapporteur against Torture identified women in detention as suffering from a double discrimination, stemming from their statute as detainees and from their sex thus being particularly exposed to the risk of torture.<sup>20</sup>As seen in Chapter I, women in detention in Nepal are treated without consideration for their rights and needs as a particularly vulnerable group.

One of the concrete measures towards reducing the risk of abuse in custody is to enable detainees to have access to the outside world. This right is recognized both in the Standard Minimum Rules - which provide for the untried prisoner's right to "be given all reasonable facilities for communicating with his family and friends" - and in the Bangkok Rules.<sup>21</sup>Rule 58 deals specifically with pre-trial detention, during which "women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties". Access to the outside world entails access to legal aid which is also included in the Bangkok Rules as a safeguard against the risk of torture and ill-treatment.<sup>22</sup>The Bangkok Rules also aim at reducing direct contact between male guards and female detainees, thus providing a safeguard against sexual harassment and abuse. For instance, Rule 19 aims at making sure that searches are only conducted by properly trained women guards and increasing access of women staff to senior positions (Rule 29).

Most of these provisions are still insufficiently implemented in Nepal's police stations and prisons: the underrepresentation of women in law enforcement - denounced by several NGOs, also in the framework of the UPR - continues to pose a threat to women's safety in custody.<sup>23</sup>

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<sup>20</sup>Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Human Rights Council Thirteenth session, United Nations General Assembly, A/HRC/13/39, 9 February 2010, para. 75.

<sup>21</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Sixty-fifth session, Third Committee, Crime prevention and criminal justice, United Nations General Assembly, 6 October 2010, rules 2, 26 and 58.

<sup>22</sup> Ibid. Rules 2 and 26.

<sup>23</sup> "Further these groups continue to be severely underrepresented in most of the public sector including decision making bodies, civil service, judiciary, law enforcement agencies, and local authorities". Nepal NGO Coalition Submission to the United Nations Universal Periodic Review Tenth session of the UPR Working Group of the Human Rights Council, July 2010.

As seen in Chapter II, the Special Rapporteur during his country visit in 2005 expressed concern regarding the use of incommunicado detention during the conflict. In a follow-up report in 2009 he noted that “long periods of illegal and/or incommunicado detention are less frequent but still occur”.<sup>24</sup> According to the Special Rapporteur, “there is an inextricable link between these enforced disappearances and torture”. Several cases seem to confirm this correlation, such as the interrogation, detention and torture of suspects – including women - in private houses.<sup>25</sup> Further, the Special Rapporteur expressed his concern regarding the length of time detainees spend in police custody, due to the falsification of police records: “A lack of accurate record keeping in many prisons and police detention facilities makes it difficult to hold police personnel accountable for these violations”.<sup>26</sup>

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<sup>24</sup>Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/10/44/Add.5 17 February 2009, p. 64, para. 23.

<sup>25</sup> See Chapter III on the case of Ms. HerminRatu Lama, her husband and another individual who were arrested, taken to a private house and tortured.

<sup>26</sup>Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak Follow-up to the recommendations made by the Special Rapporteur, Human Rights Council Thirteenth session, United Nations General Assembly, A/HRC/13/39/Add.6, 26 February 2010.

## Government continuing failure to uphold obligations, despite some positives

### 1. Insufficient safeguards

#### *Insufficient implementation of existing legal safeguards*

In addition to the criminalization of torture, other preventive mechanisms have been recommended by the NHRC, Advocacy Forum and other civil society organizations, most prominently in a model bill published in 2009 to criminalize torture and provided effective preventive measures and mechanisms.<sup>1</sup> Below is a summary of some of the key issues that need addressing to prevent torture from taking place.

#### *Failure to notify of legal basis of detention*

There has been an overall increase of arrests without warrants during the year 2010 for both women and men: 25.3% received an arrest letter during the first half of 2010 but only 19% were provided with notice for their arrest during the second half of 2010. Among the 345 women detainees that Advocacy Forum interviewed in 2010, 37.1% had not received notification of the legal basis for their detention. 38.8% received this information only after being placed in detention, which means only 24.1% were properly informed of the grounds for their arrest.<sup>2</sup> Trends during the years 2007 and 2008 were particularly worrying, as approximately 98% of women were not informed of the legal grounds for their detention which constitutes a violation of the Interim Constitution<sup>3</sup> and State Cases Act. Though there

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<sup>1</sup> Coalition against Torture, "Criminalize Torture", 26 June 2009.

<sup>2</sup> See Table 7 in Annex.

<sup>3</sup> Article 24(1) Interim Constitution 2007.

is a significant improvement over the last two years, concerns remain that many women are subjected to arbitrary arrest and detention.

As described above, the police also falsify dates of arrests in their records to be able to interrogate suspects for longer periods. This significantly increases the risk of torture, as it enables the police to detain suspects for a longer period of time. It also enables police officers to circumvent the obligation to present detainees to an “adjudicating authority” within 24 hours of arrest.<sup>4</sup> Since the end of the conflict, there has been a positive increase in the number of women arrested and presented to a judge within 24 hours: almost 60% were presented to a judge within 24 hours in 2009 while this was the case for only 43.9% of women arrested in 2006.<sup>5</sup> Advocacy Forum’s findings show that around 50% of women detainees in 2010 were presented to a judge within 24 hours, a deterioration since 2009.

*Kalpana Sunar (name changed), 30-years-old resident of the Beldangi-2 Bhutanese Refugee Camp in Jhapa District was arrested on 21 April 2009 with Amoda Sapkota (see Chapter IV) and tortured by the APF. She was illegally detained for 4 days by the APF and NP – during which time she was tortured. She was provided with an arrest letter on 26 April 2009 just before being taken to the District Judge. The first time she was remanded for 7 days on charges of murder. Her remand was extended on 3 May 2009, without her being informed for how many days.*

### *Access to legal counsel*

Under the Interim Constitution<sup>6</sup>, detainees have the right to consult a lawyer at the time of arrest. However, the police routinely fail to inform detainees of their right to legal counsel and in some cases prevent them from accessing it. In 2010, 77.4% of women detainees visited by AF had not consulted a lawyer.<sup>7</sup> The main reasons for this was due to lack of awareness of their right to consult a lawyer (41.7%), 23.8% did not think it was necessary and 8.4% due to financial constraints. Further, 3.5% of women detainees were actually denied their right to a lawyer in 2010 (i.e. they asked, but were refused), which represents an increase in comparison to previous years, during which the percentage of women prevented to seek legal counsel varied between 1 and 1.5%.

<sup>4</sup> 24(3) Interim Constitution 2007.

<sup>5</sup> See Table 8 in Annex.

<sup>6</sup> Article 24(2) Interim Constitution 2007

<sup>7</sup> See Table 9 in Annex.

*Right to family visits*

The right of detainees to maintaining contact with their families has in several cases been denied by police. As seen in Chapter IV, the Bangkok Rules include provisions that “women prisoners’ contact with their families, including their children, their children’s guardians and legal representatives shall be encouraged and facilitated by all reasonable means”.<sup>8</sup>

According to a study on women in detention by the Quaker United Nations Office, “maintaining family contact can have important benefits for all prisoners, but takes on particular significance for women who are the primary or sole carer of children and [...] most women in prison are mothers.”<sup>9</sup> The report further refers to the Special Rapporteur on Violence against Women’s recommendations that the authorities must ensure that: “female prisoners have access to their basic rights, including the right to family visits”. Further the Supreme Court recognized the link between family – in this case conjugal – visits and the right to reproductive health. On 12 April 2011 the Supreme Court directed the government to ensure the right to conjugal visits for detainees in order to “Ensure the rights of the conjugal visit in line with Article 20 (2) of the interim constitution that has guaranteed reproductive rights of every person”.<sup>10</sup>

*Reducing the risks of torture of women in detention**Lack of separation between women and men*

In most detention centers across the country, women and men are kept separately. Though in some cases there are no women cells in detention centers, in case of overcrowding women are often kept in APO offices.<sup>11</sup> However, in certain districts such as Kaski and Bardiyaj and in the Birtamod Area Police Office of Jhapa district<sup>12</sup>, women and men are kept together. According to the Standard Minimum Rules for the Treatment of Prisoners, “Men and women shall so far as possible be detained in separate institutions; in an institution which receives

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<sup>8</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Sixty-fifth session, Third Committee, Crime prevention and criminal justice, United Nations General Assembly, 6 October 2010, Rule 26.

<sup>9</sup> Women in Prison & Children of Imprisoned Mothers: Recent Developments in the United Nations Human Rights System, Laurel Townhead, April 2006.

<sup>10</sup> “Ensure jailbirds’ conjugal right: SC”, The Himalayan, 12 April 2011.

<sup>11</sup> Advocacy Forum - OHCHR Interview, 10 May 2011.

<sup>12</sup> AF District Offices information.

both men and women the whole of the premises allocated to women shall be entirely separate.”<sup>13</sup>

### *Access to sanitation*

The Bangkok Rules include specific provisions regarding health and hygiene of women in detention, thus supplementing rules 15 and 16 of the Standard Minimum Rules for the Treatment of Prisoners which make no specific reference to women with regards to hygiene. Rule 5 provides that “The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.” In the majority of detention centers that Advocacy Forum has visited, these “specific hygiene needs” were not met. For instance in most cases, women had no access to sanitary material in case of menstruation though it was provided on request, which can be problematic especially when no female police officer is present.

The frequent lack of separate sanitation facilities for men and women has also been observed by Advocacy Forum during detention monitoring. Sharing sanitation facilities with men can be extremely upsetting for female detainees and increases exposure of women to abuse, verbal or physical.

### *Lack of female police officers*

The Nepal National Action Plan on Women, Peace and Security (See Chapter II for more details) aims at empowering women at all levels of decision making in conflict prevention and peace-building and security. The first pillar of the Action Plan is *Participation* – it stated that “serious action is required with regard to proportion and participation of women in security and law enforcement agencies in Nepal”. In 2010, women officers of the Nepal Police represented 5.28% (2,962) of the Nepal Police. Women representation in the Armed Police Force was even lower with 632 women out of 31,262, which represents just a little

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<sup>13</sup> Standard Minimum Rules for the Treatment of Prisoners Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1955 approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Section 8(a).

over 2%.<sup>14</sup> There is still some way to go to fulfill the Government's pledges to increase participation of women in law enforcement agencies.<sup>15</sup>

As a result, women are arrested by male police officers despite the State Cases Act's provisions that a woman should be arrested by a "female Police Personnel".<sup>16</sup> This however is to be implemented "as far as possible", which strongly weakens the obligation. In 2010, 16.2% of women interviewed by AF report there was a female officer present at the time of their arrest. Further, there has been a general decrease regarding the presence of female officers during arrests of women suspects since the end of the conflict – in 2006, 31.7% of women were arrested in the presence of a female police officer.

Further, women detainees are often held under the sole supervision of male staff – a factor which considerably increases the risk of abuse as recognized in the Standard Minimum Rules, which include provisions for female detainees to be supervised by women police officers both in pre-trial detention and in prison: "No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. Women prisoners shall be attended and supervised only by women officers".<sup>17</sup>

The NWC conducted an investigation into the case of SafinaKhatun (See case in Chapter I) and observed that despite the absence of women police personnel at the police station the victim was not sent to the nearby district police office. The Commission also concluded that while her husband was kept near the police residence she was kept near the office of the perpetrator who had access to the keys to the room she was detained in. According to AmodaShrestha, member of the Commission, such circumstances "could have invited any sort of incident."<sup>18</sup>

<sup>14</sup> Krishna HariPushkar, "Security Sector Reform in Nepal: A Discussion of Gender Dimensions with Reference to UNSCR 1325", Peace and Conflict Monitor, January 07, 2010. [http://www.monitor.upeace.org/innerpg.cfm?id\\_article=686](http://www.monitor.upeace.org/innerpg.cfm?id_article=686)

<sup>15</sup> Advocacy Forum - Interview NWC, 18 May 2011: The NWC deplored the severe lack of women police officers which it observed during its detention monitoring missions. The Chairperson brought this up with Chief District Officer informally but was told to address the issue with the Home Ministry.

<sup>16</sup> State Cases Act Section 14(4).

<sup>17</sup> Standard Minimum Rules for the Treatment of Prisoners, 1995. "This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women". Section 53, (2) and (3).

<sup>18</sup> "Women's commission publishes probe report on rape case", The Rising Nepal, 31 March 2010 [http://www.gorkhapatra.org.np/detail.gopa.php?article\\_id=32730&cat\\_id=4](http://www.gorkhapatra.org.np/detail.gopa.php?article_id=32730&cat_id=4)

## 2. Impunity

### *De Jure impunity*

#### *Lack of criminalization of torture*

Though torture is prohibited by Section 3 of the TCA and the Interim Constitution states that any act of torture shall be punishable by law,<sup>19</sup> to date no legislation has been passed criminalizing torture and ensuring actual prosecution of perpetrators. The Supreme Court ordered the Government to criminalize torture in 2007 and human rights NGOs, including Advocacy Forum, have consistently advocated for the Government to bring Nepalese law in line with international standards.

There has been one particularly positive development in the drafting of a proposed comprehensive Penal Code that does criminalize torture.<sup>20</sup> The proposed bill has recently been submitted to the Parliamentary Secretariat, but has not yet been passed.<sup>21</sup> Human rights groups have expressed concern that the draft Code fails to fully comply with Nepal's obligations under the Convention against Torture, and that the penalty of up to 5 years' imprisonment,<sup>22</sup> is disproportionately low. In order to address these inadequacies, Advocacy Forum is advocating for further public consultation on the proposed Penal Code.

Lack of prosecution and impunity has directly contributed to perpetuating the use of torture in custody, as perpetrators have not faced any serious consequences. Thus in several cases, torture was carried out by the same perpetrator.<sup>23</sup> For instance, HerminRatu Lama and Saraswati and Indra Kala Gurung (see Chapter III for more details on these cases) were tortured under the supervision of Inspector BhismaHumagai, who ordered the beatings of HerminRatu Lama and very actively participated in torturing Saraswati and Indra Kala Gurung. No action has been taken against him.

<sup>19</sup> Section 26, Interim Constitution of Nepal 2007.

<sup>20</sup> Section 169 (1) of the proposed Penal Code 2067 BS.

<sup>21</sup> The step before the Secretariat present the draft bill to Parliament, after which time a vote must be taken with 72 hours.

<sup>22</sup> Section 169 (3) of the proposed Penal Code 2067 BS.

<sup>23</sup> Asian Human Rights Commission – Urgent Appeals Programme, “Nepal: Police sexually abuse and torture a woman and two other detainees”, Urgent Appeal Case: AHRC-UAC-174-2010, 2 December 2010.

*Laws providing immunity*

A further significant barrier to obtaining justice for victims of torture is the current legal protections provided to State actors by statute. Both the Police Act and the Army Act provide immunity from prosecution for any actions carried out while discharging their duties “in good faith”.<sup>24</sup> In the case of Maina Sunuwar, who was tortured and killed by members of the army on 17 February 2004, the army’s court of inquiry’s investigation declared action should be taken against Colonel Bobby Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun but concluded that although torture was inflicted on Maina with the intent of interrogation there was no bad faith (‘malafide’) involved in killing her”<sup>25</sup> and that “the torture was inflicted on her with the intent of interrogation, not killing”. The subsequent court martial decision of 8 September 2005 found the three military officers guilty only of using wrong interrogation techniques and of not following proper proceedings in the disposal of the dead body. They were sentenced to six months’ imprisonment, temporary suspensions of promotions and a paltry monetary fine as compensation to Maina’s family. The guilty officers did not actually have to serve the prison term because the court held that they had spent their time in confinement during the proceedings of the Court Martial.

**De facto impunity***Shortcomings in implementing decisions of courts and statutory bodies**Lack of implementation of court decisions under Torture Compensation Act (TCA)*

The focus of the TCA is on providing some reparation to victims of torture. The preamble to the TCA states: “A law enacted to provide for payment of compensation to victims of torture while in detention.” Though the TCA also allows for courts to recommend disciplinary action,

<sup>24</sup> Army Act, 1959 Section 24 A; Police Act 1955, Section 37.

<sup>25</sup> The Court Martial “sentenced Colonel Bobby Khatri to six months’ imprisonment and suspension of his promotion for two years for not fulfilling his responsibility in accordance with section 54 and 60 of the 1963 Army Act; Captain Sunil Prasad Adhikari and Captain Amit Pun were sentenced to six months’ imprisonment and suspension of promotion for one year for not adhering to the NA’s instructions on observing human rights and humanitarian law in accordance with the Army Act, section 54 and 60. The Court Martial also recommended Rs 150,000 (US\$2010) as compensation to the victim’s family and an additional compensation of Rs. 50,000 (US\$670) from Bobby Khatri and Rs 25,000 (US\$335) each from Sunil Prasad Adhikari and Amit Pun. No Army personnel were convicted for the torture and killing of Maina Sunuwar. The guilty officers did not actually have to serve the prison term because they had spent their time in confinement during the proceedings”. Advocacy Forum, “Maina Sunuwar, Separating Fact from Fiction”, 2010.

this has rarely been done; and even in those cases where the court has made such a directive, it is not clear whether the concerned agencies (Nepal Army or Nepal Police) have implemented the directive.

This has been repeatedly denounced by the Special Rapporteur on Torture who expressed concern regarding “the prevailing culture of impunity for torture in Nepal, especially the emphasis on compensation for acts of torture as an alternative to criminal sanctions against the perpetrator”.<sup>26</sup>

According to Advocacy Forum data, since the TCA came into force, only four women have been awarded compensation under it: Mahima Kusule (NRs 15,000) on 22 May 2011, Padam Maya Sunuwar (NRs 20,000) on 1 February 2011, Kalpana Bandari (NRs 60,000) on 15 June 2008 and Sabita Lama (NRs 10,000) on 4 March 2007. None of these women have received the compensation yet. Though it is arguable that by providing compensation, there will be a measure of deterrence against this type of behavior, the maximum amount of compensation that can be awarded is NRs 100,000 and possible departmental action, which is hardly proportionate to the gravity of the crime. Further, the maximum amount of NRs 100,000 is rarely awarded:

*Padam Maya Sunuwar, 48, was arrested by the police on January 16, 2010 on suspicion of the murder of a villager. Along with two other individuals she was taken to the house of the former head of the so called Village People’s Government of the UCPN-Maoist. At 6am, they were shown the dead body. Four policemen then took the three detainees to the computer room of the Area Police Office (APO) Preeti around 9am, saying “the computer will show the culprit”. Padam was the first to be questioned. She was taken by policemen Padam to a room in the APO and made to sit on the floor. One of the policemen stood on her knee and the other policemen beat her on the soles of her feet around 80 to 90 times. She then lost consciousness.*

*They were given food and then the Police questioned them further. Padam continued to deny any involvement. One of the policemen said in Madhesi language “take her to the room and beat her, she will speak the truth”. The policemen then took her to the kitchen and beat her on the soles of her feet, then made her stand up and with the same stick beat her on her hip. When she tried to avoid the beatings she received the blows on her hand, which was swelling. She*

<sup>26</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Nepal, Commission on Human Rights Sixty-second session, E/CN.4/2006/6/Add.5 9 January 2006.

*counted 12 times and could not count further. Then, one unidentified policeman said in Madhesi language “do not beat her anymore or she will die and a case will be brought against you”. Then only the policemen stopped. One policeman said: “tell the truth or he will put sisnu [nettle] leaves in your vagina”. She denied any involvement and they left the room, verbally abusing her. The policemen who tortured her were in plain clothes. They kept her there for one night. The next day, they took her and the other two detainees to APO, Dhobi and from there they were taken to DPO, Manthali, where she was kept for 2 days. They further questioned her but did not torture her though threatened to beat her with a stick. After 3 days of illegal detention, she was released without charge.*

*With help from Advocacy Forum, the victim had filed a TCA case on 16 February 2010. The District Court in Ramechhap ordered the Government to provide the victim with NRs 20,000 compensation. In addition to the devastating psychological impact of torture and considering the costs of medical treatment and the expenses endured during the judicial process, this amount is hardly sufficient. The District Court also ordered the Police to take departmental action against Police Inspector Jaya Narayan Yadav. Implementation of the court order is pending.*

### *Lack of implementation of NHRC recommendations*

As already indicated above, the government has failed to implement recommendations of the NHRC, especially any recommendations for further investigations and prosecutions or departmental action. According to the NHRC “the Government’s action on prosecution and departmental action is discouraging. They are much keener on reparations.”<sup>27</sup> Indeed, no recommendations to prosecute issued by the NHRC were ever implemented. The NHRC refers to the Government’s initiative to compensate victims of human rights violation as recommended by NHRC by “releasing the sum of approximately NRs 70 million for this purpose. It is also to be noted that very few recommendations on the complaints on economic, social and cultural rights have been implemented”.<sup>28</sup>

### *Reaction of the state to complaints: lack of political will*

The government’s reaction to observations and criticism from national and international observers in the context of the UPR has been to deny the widespread practice of torture: “Nepal does not tolerate any form of torture. There is no systematic torture in Nepal. There

<sup>27</sup> Advocacy Forum - NHRC Interview 10 May 2011.

<sup>28</sup> Ibid and NHRC Report “NHRC Recommendations upon Complaints in a Decade”, p. 13.

are sufficient constitutional and legal safeguards for the prevention of torture and a special bill designed to incorporate provisions of CAT is also under active consideration.”<sup>29</sup>

The Government has shown little interest in holding both State and non-State actors accountable for human rights abuses committed during the conflict and thereafter. As seen in Chapter V, the Special Rapporteur on Torture in his reviews of the recommendations made after his 2004 visit to Nepal concluded that torture has continued to occur in this environment of impunity.<sup>30</sup> To date, there has not been a single criminal conviction in a civilian court for human rights abuses during the conflict or thereafter in Nepal.

A significant barrier to prosecuting human rights cases in Nepal is the reluctance on behalf of the police, public prosecutor and the judiciary to act on evidence of torture presented to them. There was hope that under Section 135 (3) (c) of the 2007 Interim Constitution, which entrusts the Attorney General’s Department with powers to investigate and prevent ill-treatment in custody, there may be some criminal prosecutions materializing. However, it appears extremely reluctant to carry out this function. During a meeting with former Attorney General Bharat Bahadur Karki in May 2010, Advocacy Forum raised the issue of lack of responses from the department. The Attorney General in response stated that there is no mandate to send responses to individual organizations and maintained that the Attorney General’s Department is not an investigating body; rather it has the power to monitor investigations by police of cases reported to them. He suggested that Advocacy Forum send cases to the Human Rights Unit of the Nepal Police and to the NHRC for proper investigation as those were the investigating bodies. Advocacy Forum informed him that it is sending cases to those bodies too. To date, Advocacy Forum has only received one response from the Attorney General’s Office, which was in relation to the case of Dhan Raj Karki which had been referred by Advocacy Forum to both the Nepal Police and the AG’s office. The Nepal Police investigated and sent its report to the Attorney General’s office. The AG then provided the report of the police investigations to Advocacy Forum.

### *Withdrawal of Political cases*

There have been hundreds of withdrawals of cases against politically aligned people in Nepal. Two cabinet decisions have authorized the withdrawal of criminal charges pending

<sup>29</sup> Report of the Working Group on the Universal Periodic Review, Human Rights Council Seventeenth session, A/HRC/17/5, 8 March 2010, p. 12, para. 101.

<sup>30</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak Follow-up to the recommendations made by the Special Rapporteur, Human Rights Council Thirteenth session, United Nations General Assembly, A/HRC/13/39/Add.6, 26 February 2010, para. 456.

before the courts in more than 600 cases (including murder and rape). The current Government under the leadership of Prime Minister JhalaNathKhanal is apparently planning to follow suit. Deputy Prime Minister and Minister of Home Affairs, Krishna BahadurMahara, told the media on 20 May 2011:

*“Cases of political nature and related to the conflict time should be quashed. The cases related to conflict time are against the spirit of the Comprehensive Peace Agreement and they should be withdrawn.”<sup>31</sup>*

The procedure to withdraw cases is set out in Section 29 of the State Cases Act 1992. It provides that cases can be withdrawn on the basis of a deed of reconciliation between the parties involved (not a formal withdrawal of charges), or if a court agrees to the Government proposal. The “Procedures and Norms to be Adopted While Withdrawing Government Cases-1998” (“1998 Standards”) further clarify the nature of the criminal cases qualifying for withdrawal and the process to be followed.<sup>32</sup>

Despite the Supreme Court decision in Gagan Raya Yadav, in which the court held that case withdrawals are not be ordered as a matter of course, District Court judges have been passive in their acceptance of case withdrawal applications and there are reportedly very few instances where district courts have scrutinized the Government’s decisions for withdrawal or refused consent for withdrawal. Indeed, in one case, a lawyer appealed against a district court decision to allow the withdrawal of cases and obtained a stay order.

*Ms. KalpanaBandari, was a Police constable in Kavre district during the conflict. Her husband was killed by the Maoists. She was forced into displacement and was living in a temporary camp for IDPs in Tinkune, Kathmandu. She was arrested after participating in a protest by a group of armed, uniformed male policemen under the orders of two inspectors - PI JayaramSapkota of Gausala Metropolitan Police Sector and PI Mr. HiraBahadurPandey of New Baneshowar*

<sup>31</sup> Republica, ‘Mahara indicates withdrawal of cases against Sapkota, others’, 20 May 2011, [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=31508](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=31508)

<sup>32</sup> The 1998 Standards classify criminal cases into two broad groups: 1) cases of political nature (Section 3, 4 and 5 of the Crime Against State Act -1989); and 2) general cases (filed under existing laws of Nepal, including homicide, corruption, rape, robbery, drug peddling.) The 1998 Standards provide that the second category of offences shall only be withdrawn in the rarest of instances, taking into account circumstantial evidence, any prior criminal history of the accused, social standing of the accused, and other related factors, including whether the case is filed with a motive of political vengeance or malicious intent.

*Metropolitan Police Circle - on 17 May 2007. They came to the IDP camp and entered her tent, grabbed her, beat her, insulted her, threatened to rape and kill her in front of her children. After an hour of physical and verbal assaults, the police dragged her over the ground to be loaded in a van, where she was kicked repeatedly in the stomach by men wearing boots. She asked for water and instead one police officer was told by a commanding officer to urinate in her mouth. While in Police custody, she was severely kicked with boots on her groin and breast by male police officers to the point that she began bleeding from her uterus. She lost consciousness and had to be brought to the Maternity Hospital in Thapathali, Kathmandu.<sup>33</sup> While the doctor advised her to have an x-ray of her uterus, she was not taken for any further care. Instead, she was given some medicine, transferred to multiple police facilities and held for several days. The charges were suddenly dropped and with no further explanation Kalpanawas released.*

*She filed a case in the Kathmandu District Court for torture compensation on 11 June 2007. One of the Police Inspectors involved in her torture, HiraBahadurPandey, tried to pressure her into dropping the case. According to the AHCR, he called Mr. KalayanBudhathoki, who was arrested at the same time as Kalpana and told him that: "Kalpanahas filed a case against us. So, convey to her the message that she must withdraw the case. If she doesn't withdraw the case, I will arrest her under any charge and treat her badly".<sup>34</sup> On 15 June 2008, Kalpanawas awarded NRs.60,000 compensation under the TCA – but as of early 2011, she had not received the money. Though the court recognized her as a victim and awarded her compensation, it did not order any further action against the perpetrators.*

*She was then given a place to live by a member of the NC. On 11 May 2011, YCL members came to her home and claimed the land was theirs. They beat her severely and at the time of the interview with Advocacy Forum on 27 May 2011, Kalpanahad bruises on her arms, hand, and leg. She also had to undergo a head scan as she received blows to her head. She is scared to go home, and she fears the YCL members will come back.*

*She filed a complaint against the perpetrators who were arrested and kept in custody. She was told by DSP RadikaKhorka that the Maoist came to the detention place and forced the police to release the suspects, and that police had no other choice but to comply. All suspects were detained in custody for 4 days, and then released. Further, when Kalpanawent to meet two Maoist leaders, KrishnaBahadurMahara and KiranVaidiya, both denied that Maoists were responsible.*

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<sup>33</sup> Advocacy Forum, "Hope and Frustration, Assessing the Impact of Nepal's Torture Compensation Act – 1996", 26 June 2008, p. 33.

<sup>34</sup> Asian Human Rights Commission, Update on Urgent Appeal "Torture and sexual molestation victim receives threats from the police for registering a case in court" July 5, 2007, <http://www.humanrights.asia/news/urgent-appeals/UP-094-2007>

*Reaction of the Government to criticism*

Despite recent pledges by the Government to fight impunity<sup>35</sup>, such as during the UPR, the absence of any prosecution for past crimes has seriously strained the credibility of the Government's resolve to prosecute perpetrators.

National and international human rights defenders expressed their concern about impunity during the UPR on 25 January 2011. A report submitted by 20 stakeholders to the UPR Working Group underlined the ongoing impunity for past human rights violations including torture, rape and sexual violence. Referring to Human Rights Units within the Army and Police, the Government declared that the "investigating bodies and institutions established by the Nepal Army and Police have also contributed immensely to counter impunity." This observation is however challenged by a great number of reports, including Advocacy Forum's own research and findings regarding the Police Human Rights Unit and evidence of flawed investigations and failure to recommend adequate punitive measures against perpetrators (see Chapter III). The Government further referred to the work of national human rights institutions, describing the work of the Human Rights Units as "complementary" to that of the NHRC and NWC. As seen in Chapter III, the Human Rights Units do not qualify as credible safeguards against torture and the efficiency of the NHRC (and to a lesser extent the NWC) as investigative mechanisms has been continuously questioned, including by the High Commissioner for Human Rights in Nepal in February 2011.<sup>36</sup>

**3. Lack of due diligence**

In addition to the lack of investigation, prosecution and reparation for torture and other ill-treatment committed by state actors, there are also grave concerns by the state authorities lack of due diligence in relation to crimes amounting to torture by private actors (such as domestic violence and other gender based violence).

The UN Declaration on Violence against Women defines the State's due diligence in relation to violence against women: "States should pursue by all appropriate means and without

<sup>35</sup> The Government of Nepal declared "Nepal is committed to end impunity", Report of the Working Group on the Universal Periodic Review, Human Rights Council Seventeenth session, A/HRC/17/5, 8 March 2010, p. 4, para. 10.

<sup>36</sup> The OHCHR noted regarding the NHRC, NWC and National Dalit Commission that "all three Commissions remain significantly under-resourced and the implementation rate of their recommendations remains low", Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal, United Nations General Assembly, Human Rights Council, Sixteenth session A/HRC/16/23, 16 February 2011, p. 13, para. 49.

delay a policy of eliminating violence against women and, to this end, should [...] (c) exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”<sup>37</sup>

CEDAW requires Nepal to prevent, investigate, punish and provide compensation for all acts of violence wherever they occur.<sup>38</sup> Further, the UN Declaration on Elimination of Violence against Women states that “women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.”<sup>39</sup>

According to the Special Rapporteur on Violence against Women “Perhaps the greatest cause of violence against women is government inaction with regard to crimes of violence against women”. She further stated “In the context of norms recently established by the international community<sup>40</sup>, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women”.<sup>41</sup>

Burden of proof is particularly problematic in cases of rape. The family members of victims are often illiterate and poor and are unaware of the importance of health check-ups and preservation of evidence. This results in victims visiting the hospital days after the rape occurred. In remote areas, rape victims have to walk for several days to reach to hospitals, thus increasing the chances of losing evidence. Health check-ups are carried out in government hospitals where they have to queue for a long time which places an additional physical and mental burden on victims.

In addition to the traumatic experience of reporting rape, worsened by the 35 day statute of limitation, conditions to establish proof of rape are not satisfactory: doctors should conduct

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<sup>37</sup> United Nations Declaration on the Elimination of Violence against Women, United Nations General Assembly, 85th plenary meeting, A/RES/48/104, 20 December 1993, Art. 4(c).

<sup>38</sup> Committee on the Elimination of Discrimination against Women, General Recommendations 19 (1992).

<sup>39</sup> Declaration on the Elimination of Violence against Women, United Nations General Assembly 85th plenary meeting, A/RES/48/104, 20 December 1993, Art. 4(d).

<sup>40</sup> This applied to Nepal as it has, among others, ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<sup>41</sup> Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Commission on Human Rights Fiftieth session, E/CN.4/1995/42, 22 November 1994, Section II, G, para. 72.

examinations in line with standards established by the World Health Organization<sup>42</sup> such as making sure they take place in the proper settings; for instance “If the clothing removed was that worn during the assault and forensic evidence is to be collected, the patient needs to undress over a white sheet or large piece of light paper.”<sup>43</sup> Further, the WHO Guidelines state that “the examination should be performed in a setting that is light, warm, clean and private. Ideally, the accommodation should provide both auditory and physical privacy, with separate areas for undressing.”<sup>44</sup> The Guidelines also insist on the need to inspect the victim’s whole body for wounds, including on thighs, soles of feet and forearms (especially for defensive wounds).<sup>45</sup> In Nepal, examinations however usually only consist of checking vaginal rupture and intake. Due to the lack of laboratories, experts and investigative officers, the physical condition of victims of rape is not properly and thoroughly examined in all districts, resulting in victims not being able to provide medical evidence to substantiate their claim.

### *Women’s access to justice*

Women in Nepal tend not to seek reparations through formal channels. This is mainly linked to cost<sup>46</sup> – women are part of the poorer section of the population<sup>47</sup> – and to the perception that the male-dominated judiciary in Nepal is biased in its judgment against women.<sup>48</sup> Women tend to resort to informal justice mechanisms because they are pushed either by the police or by their families to take recourse to them and also because they provide “instant justice” for a lesser cost.<sup>49</sup> The sensitive nature of gender based violence and sexual abuse makes women even less inclined to report abuse. Further, access to justice is hindered by the lack of female police officers - women are less susceptible to confide in male police officers, especially in cases of sexual violence - as well as poor training in the

<sup>42</sup> Guidelines for medico-legal care for victims of sexual violence, World Health Organization 2003.

<sup>43</sup> Ibid., p. 38.

<sup>44</sup> Ibid., p. 38.

<sup>45</sup> Ibid., p. 39-41.

<sup>46</sup> UNDP Nepal Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010.

<sup>47</sup> According to the Report of the NHRI of Nepal on the UPR Processes, “In general women fall among the poorer section of population. Estimated income of women in the country is only 0.408 as compared to 0.503 of men”, p. 6, para. 44.

<sup>48</sup> Nepal Bar Association, “Ringling the Equality Bell, the Role of Women Lawyers in promoting Gender Equality in Nepal” August 2009, p. 7.

<sup>49</sup> Forum for Women Law and Development (FWLD), the Institute for Human Rights and Communication Nepal (IHRICON), International Alert and Saferworld, “Security and justice in Nepal District assessment findings”, March 2010.

police on gender based violence. According to a CeLRRd study, 54% of women report they were harassed during investigation.<sup>50</sup>

According to Advocacy Forum's findings, women from Dalit and indigenous groups especially have stated that they did not want to report rape and other forms of violence as they did not expect to get justice. Their experience is that police either refused to file their complaints or failed to conduct proper investigations. Therefore, they feel they have no alternative but to tolerate violence including rape.

Rape and sexual violence have a devastating mental, physical and economic impact on victims and directly jeopardize women's ties to their families and communities. Illiteracy, poverty, traditional customs, superstition, culture and shame discourage victims of rape to file FIRs. Further, victims are pressured not to disclose the incident by the perpetrators and in some cases by their families.<sup>51</sup> Perpetrators also take advantage of the economic condition of victims by providing compensation in exchange for silence.

The public nature of formal justice mechanisms has discouraged victims of rape and sexual violence to file complaints, for fear of cultural stigmatization. Unmarried women and their families often consider it would ruin their chances of finding a husband while married women fear being shunned by their husband and family.

### *Nepal's strategy to fight Gender Based Violence*

Some measures have been introduced in order to address violence against women in Nepal since the end of the conflict. For instance, the CPA includes provisions to prohibit gender based violence: "Both sides agree to special protection of the rights of women and children, to immediately stop all acts of violence against women and children including child labor as well as sexual exploitation and abuse". Further, the Interim Constitution prohibits "physical, mental or any other form of violence against women."<sup>52</sup>

Nepal has shown some commitment to ending violence against women, for instance by declaring 2010 as a year against gender-based violence. The Office of the Prime Minister and the Council of Ministers also launched the Nepal National Action Plan on the Year against Gender Based Violence (GBV) in 2010. The aims of the Action Plan included increasing

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<sup>50</sup> The Center for Legal Research and Resource Development, "Impact of Corruption in Criminal Justice System on Women", 8 October 1999.

<sup>51</sup> Human Rights Watch, 'No justice for gang-rape victim', 15 March 2011, <http://www.hrw.org/en/news/2011/03/15/nepal-no-justice-gang-rape-victim>

<sup>52</sup> Article 20, Interim Constitution of Nepal 2007.

public awareness of GBV, punishing perpetrators and ensuring access to justice for victims.<sup>53</sup> Though still too early to draw any conclusions, the Action Plan shows some good will on behalf of the Government. OHCHR welcomed one of the main concrete mechanisms established by the Action Plan; the setting-up of Gender Based Violence desks in most districts<sup>54</sup>, but also of “service and community centers for the protection and rehabilitation of victims, including GBV in police training curriculum and developing standard procedures to prevent and respond to GBV by state actors.”<sup>55</sup>

Further, the Government has enacted the Domestic Violence (Offence and Punishment) Act in 2009 which only came into force in September 2010 when the Government passed the necessary regulations.<sup>56</sup> Some weak provisions in the Act have been identified, for instance the Act does not provide for the alleged perpetrator of such violence to be held in custody while the charges are investigated.<sup>57</sup>

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<sup>53</sup> National Plan of Action for “Year Against Gender Based Violence, 2010” Government of Nepal Office of the Prime Minister and Council of Ministers, 25 November 2009. [http://www.engagingmen.net/files/resources/2010/lbelbase/National\\_Plan\\_of\\_Action\\_for\\_Year\\_Against\\_Gender\\_Based\\_Violence\\_2010.pdf](http://www.engagingmen.net/files/resources/2010/lbelbase/National_Plan_of_Action_for_Year_Against_Gender_Based_Violence_2010.pdf)

<sup>54</sup> Advocacy Forum - NWC Interview, 18 May 2011: It seems not much has been done in this regard – the government’s pledge to create Women human rights desks in CDOs has, according to the NWC, insufficiently been implemented.

<sup>55</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal, United Nations General Assembly, Human Rights Council, Sixteenth session A/HRC/16/23, 16 February 2011, para. 67.

<sup>56</sup> OHCHR Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal? United Nations General Assembly, Human Rights Council, Sixteenth session A/HRC/16/23, 16 February 2011, para. 66.

<sup>57</sup> The NGO Saathi has also voiced concern regarding practical implementation of the Act: “Law enforcement aspect is weak and no significant progress has been made” in Strict law implementation sought to end gender violence, *The Rising Nepal*, 1 December 2010.

Other problematic areas of the Act have been identified by the International Centre for Transitional Justice and Advocacy Forum, “Across the Lines, the impact of Nepal’s conflict on women”, ICTJ and Advocacy Forum, p. 72.



## Conclusions and recommendations

The initial gradual reduction in the prevalence of torture of both male and female detainees after the end of the conflict appears to be reversing. In some districts, such as Kathmandu, levels of torture of women are back to what they were during the conflict. There is also a reversal in upholding some of the few legal safeguards – however weak they often are - in practice.

Unless and until Nepal firmly criminalizes torture and puts in place the necessary preventative framework, torture will continue to be habitual.

Specifically in relation to women, the government should prioritize the implementation of the following recommendations:

1. Recognize the particular risk of abuse that women face in pre-trial detention and adopt appropriate measures in policies and practice to guarantee women's safety during the time they spend in police custody.
2. Initiate independent investigations into all reports of torture and other ill-treatment against women and bring those responsible to justice.
3. Ensure that women in detention are systematically detained separate from men.
4. During arrest, transfer and detention, a female officer should be present. In accordance with the Standard Minimum Rules for the Treatment of Prisoners, women in detention should be supervised by women staff.
5. Enhance the internal accountability of police and implement clear procedures and standards to be followed regarding women in detention.

6. Ensure that all women detainees, while being processed for detention, are informed of their rights, including the right to consult a lawyer.
7. Provide for a comprehensive procedure to ensure health check-ups are compulsory, confidential and undertaken by physicians trained in the Istanbul Protocol procedures.<sup>1</sup> Women detainees should be examined by women doctors in private without the presence of police.

Advocacy Forum is also making the following recommendations relating to torture in general:

8. Introduce comprehensive legislation to criminalize torture as a matter of priority.
9. Put in place an effective and impartial mechanism for the prevention and investigation of torture.
10. Ensure all detainees are kept at official places of detention only and that any public official responsible for detaining people in private houses is disciplined.
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. Public officials who prevent authorized persons from inspecting or monitoring detention facility shall be subject to penalties as prescribed by the Act.
12. Criminalize enforced disappearances and ratify the Convention against Enforced Disappearances.

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<sup>1</sup> The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) available at <[www.ohchr.org/Documents/Publications/training8Rev1en.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf)> accessed on 29 April 2011.

## Annexes

**Table 1 – Trends in torture of women, 2006 –2010**

	2006	2007	2008	2009	2010
Number of women claiming torture	26	19	20	35	36
Total women	124	186	197	256	345
% of women claiming torture	21%	10.2%	10.2%	13.7%	10.4%

**Table 2 – Trends in torture during 2010**

	January- June 2010	July-December 2010
Overall number of detainees visited	2015	2183
Number of detainees claiming torture	317	492
% of detainees claiming torture	15.7%	22.5%
Number of women visited	157	188
Number of women claiming torture	11	25
% of women claiming torture	7%	13.3%

**Table 3 – Alleged torture of women by caste and ethnic background**

		2007	2008	2009	2010
Brahmin Chhetri (BC)	Number of women	8	4	10	13
	Claiming torture				
	Not tortured	67	68	82	128
	Total detainees	75	72	92	141
	in caste group				
	% of BC female detainees	40.3%	36.5%	35.9%	40.9%
	% claiming torture	10.7%	5.6%	10.9%	9.2%
	within caste				
% of BC claiming torture in relation to total women claiming torture	42.1%	20.0%	28.6%	36.1%	
Dalit Group	Number of women	1	1	6	3
	Claiming torture				
	Not tortured	19	17	19	44
	Total detainees in caste group	20	18	25	47
	% of Dalit female detainees	10.7%	9.1%	9.8%	13.6%
	% claiming torture	5.0%	5.6%	24.0%	6.4%
	within caste				
	% of Dalit women claiming torture in relation to total women claiming torture	5.3%	5.0%	17.1%	8.3%
Indigenous Group	Number of women	8	11	5	8
	Claiming torture				
	Not tortured	56	65	77	84
	Total detainees in caste group	64	76	82	92
	% of Indigenous female detainees	34.4%	38.6%	32.0%	26.6%
	% claiming torture	12.5%	14.5%	6.1%	8.7%
	within caste				
	% of indigenous women tortured in relation to total women claiming torture	42.1%	55%	14.3%	22.2%

## ANNEXES

		2007	2008	2009	2010
Newar Group	Number of women Claiming torture	1	0	0	3
	Not tortured	7	5	11	18
	Total detainees in caste group	8	5	11	21
	% of Newar female detainees	4.3%	2.5%	4.3%	6.1%
	% claiming torture within caste	12.5%	0%	0%	14.3%
	% of Newar claiming torture in relation to total women claiming torture	5.3%	0%	0%	8.3%
	Other Group	Number of women claiming torture	0	1	6
Not tortured		8	6	16	14
Total detainees in caste group		8	7	22	15
% of Other female detainees		4.3%	3.5%	8.6%	0.3%
% claiming torture within caste		0%	14.3%	27.3%	6.7%
% of other tortured in relation to total women claiming torture		0%	5%	17.1%	2.8%
Tarai Group		Number of women claiming torture	1	3	8
	Not tortured	10	16	16	19
	Total detainees in caste group	11	19	24	27
	% of Tarai female detainees	5.9%	9.6%	9.4%	7.8%
	% claiming torture within caste	9.1%	15.8%	33.3%	29.6%
	% of Tarai tortured in relation to total women tortured	5.3%	15%	22.8%	22.2%

**Table 4 – Torture in relation to 4 most common charges**

		2006	2007	2008	2009	2010
Public Offense	Number of women claiming torture within charge	3	9	3	9	8
	% claiming torture within charge	9.7%	16.1%	6.8%	13.2%	7.4%
	Total charge	31	56	44	68	108
Drugs	Number of women claiming torture within charge	4	1	4	4	6
	% claiming torture within charge	14.3%	2.3%	18.2%	12.1%	14.6%
	Total charge	28	44	22	33	41
No charge	Number of women claiming torture within charge	4	3	5	7	7
	% claiming torture within charge	40%	11.1%	11.6%	18.9%	17.5%
	Total charge	10	27	43	37	40
Murder	Number of women claiming torture within charge	1	1	2	5	5
	% claiming torture within charge	9.1%	4.5%	8%	14.7%	10.4%
	Total charge	11	22	25	34	48

**Table 5– Medical Examinations**

	2006		2007		2008		2009		2010	
		%		%		%		%		%
Yes	103	83.1	145	78.0	153	77.7	218	85.2	301	87.2
No	21	16.9	41	22.0	44	22.3	38	14.8	44	12.8
Total	124	100	186	100	197	100	256	100	345	100

**Table 6 – Was the detainee asked about torture when brought before a judge?**

			Frequency	Percent	Valid Percent
2006	Valid	Yes	6	4.8	5.3
		No	108	87.1	94.7
		Total	114	91.9	100
		Not taken to the Court	10	8.1	
	Total		124	100	
2007	Valid	Yes	19	10.2	11.9
		No	140	75.3	88.1
		Total	159	85.5	100
		Not taken to the court	27	14.5	
	Total		186	100	
2008	Valid	Yes	12	6.1	7.8
		No	142	72.1	92.2
		Total	154	78.2	100
		Not taken to the court	43	21.8	
	Total		197	100	
2009	Valid	Yes	19	7.4	8.7
		No	200	78.1	91.3
		Total	219	85.5	100
		Not taken to the court	37	14.5	
	Total		256	100	
2010	Valid	Yes	33	9.6	10.8
		No	272	78.8	89.2
		Total	305	88.4	100
		Not taken to court	40	11.6	
	Total		345	100	

**Table 7 – Notification of the legal basis for detention**

		Frequency	Percent	Valid Percent	
2006	Yes	11	8.9	8.9	
	No	113	91.1	91.1	
	Total	124	100	100	
2007	Yes	3	1.6	1.6	1.6
	No	183	98.4	98.4	100
	Total	186	100	100	
2008	Yes	4	2	2	2
	No	193	98	98	100
	Total	197	100	100	
2009	Yes	81	31.6	31.6	31.6
	No	175	68.4	68.4	100
	Total	256	100	100	
2010	Yes	83	24.1	24.1	24.1
	No.	128	37.1	37.1	61.2
	Given but after brought to detention	134	38.8	38.8	100
	Total	345	100	100	

**Table 8 – Was the detainee taken to an adjudicating authority within 24 hours of arrest?**

			Frequency	Percent	Valid Percent
2006	Valid	Yes	50	40.3	43.9
		No	64	51.6	56.1
		Total	114	91.9	100
		Not taken to Court	10	8.1	
	Total		124	100	
2007	Valid	Yes	78	41.9	49.1
		No	81	43.5	50.9
		Total	159	85.5	100
		Not taken to Court	27	14.5	
	Total		186	100	
2008	Valid	Yes	84	42.6	54.5
		No	70	35.5	45.5
		Total	154	78.2	100
		Not taken to Court	43	21.8	
	Total		197	100	
2009	Valid	Yes	129	50.4	58.9
		No	90	35.2	41.1
		Total	219	85.5	100
		Not taken to Court	37	14.5	
	Total		256	100	
2010	Valid	Yes	154	44.6	50.5
		No	151	43.8	49.5
		Total	305	88.4	100
		Not taken to Court	40		11.6
	Total		345	100	

**Table 9 – Reasons for no access to lawyer**

			Frequency	Percent	Valid Percent
2006	Valid	Financial constraints	18	14.5	31
		No address available	5	4	8.6
		Not allowed to meet	3	2.4	5.2
		Not necessary	8	6.5	13.8
		If others	24	19.4	41.4
		Total	58	46.8	100
	N/A		66	53.2	
Total		124	100		
2007	Valid	Financial constraints	2	1.1	10
		No address available	2	1.1	10
		Not allowed to meet	3	1.6	15
		Not necessary	2	1.1	10
		Other	11	5.9	55
		Total	20	10.8	100
	N/A		166	89.2	
Total					
2008	Valid	Financial constraints	3	1.5	9.7
		No address available	5	2.5	16.1
		Not allowed to meet	2	1	6.5
		Not necessary	3	1.5	9.7
		Other	18	9.1	58.1
		Total	31	15.7	100
	N/A		166	84.3	
Total		197	100		
2009	Valid	No address available	5	2	33.3
		Not allowed to meet	3	1.2	20
		No Necessary	1	0.4	6.7
		Other	6	2.3	40
		Total	15	5.9	100
N/A		241	94.1		
Total		256	100		
2010	Valid	Financial constraints	29	8.4	10.9
		Did not know how	144	41.7	53.9
		Not allowed to meet	12	3.5	4.5
		Not necessary	82	23.8	30.7
		Total	267	77.4	100
	N/A		78	22.6	
Total		345	100		