



EUROPEAN COMMISSION

# Final Evaluation of Advocacy Forum's Prevention of Torture Project

Conducted by  
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February 2012

Disclaimer: The views expressed in this evaluation are those of the individual consultant and are not necessarily shared by Advocacy Forum or the European Commission.

## Executive Summary

In November 2011, a final evaluation Advocacy Forum's EC project "Prevention of Torture" (DIDHR/2007/62) was carried out by independent evaluator Ben Schonveld. The general objective of the mission was to assess final impact and contractual compliance.

### Results

The project aimed to contribute to a substantial reduction of incidents of torture and ultimately prevent torture in Nepal. This was achieved through an integrated strategy focussed on regular preventive visits to places of detention (hereafter, monitoring), documentation of cases and patterns of torture, legal work to obtain redress, advocacy, as well as awareness-raising among key stakeholders.

Overall the evaluation concluded that the project appears to have fulfilled its contractual obligations and in most cases over-achieved on expected results. Generally the project has exceeded predicted outcomes and in terms of the overall objective the project would appear to be a model intervention.

A certain level of shortfall from original outputs did occur but human rights projects operating in circumstances of a high level of impunity, uncertainty and weak institutional framework predictably tend to diverge from project outputs. But where results have fallen short, external circumstances appear to credibly explain the outcome.

### Explaining the model

There appear to be four activities that have directly influenced outcomes. The most obvious is the monitoring itself. The second influence would appear to be the dialogue that takes place between justice sector stakeholders on the specific issues documented during the monitoring visits (activity six). The third influence would appear to be the legal aid work (activity three) to support legal cases against the police who have tortured or abused detainees. Finally, where domestic remedies are exhausted, international advocacy plays a key role (activity seven). The roles and influence of these individual activities are discussed below.

### Results

Over the reporting period, a reduction in torture of 14% has taken place across 20 of Nepal's 75 districts. Within the limits of a short evaluation, the available evidence suggests that this result is attributable to the intervention.

The data presented during the mid-term evaluation showed a more significant decline in torture (where monitoring took place) during the funding period. But more recent statistics showed, for the first time *an increase* in incidence of torture. The rise appears to be attributable to external factors, primarily political, and these are examined in detail in the report. The final figure then stands at a nonetheless exceptional result of 14%.

Moreover, the project increased key protections against torture. Access to a medical check-up during detention is a vital tool allowing detainees to obtain redress given the

authoritative standing of medical documentation in court proceedings. Furthermore, putting on record a detainee's condition provides a clear deterrent to further abuse. Access to medical check-ups improved by 12.6% over the funding period.<sup>1</sup> These results were attributable to the project.

Another key and highly practical protection was AF's success in building the practice amongst judges to ask the accused if they have been ill-treated. This practice increased by 170% over the funding period.<sup>2</sup> Illegal detentions dropped by 5.8%<sup>3</sup> over the funding period. Finally there were significant unforeseen results in terms of its prevention work with the police. The daily interaction between lawyers and police appears to be a model worth examining. It is the view of the evaluation that this practice should be considered as a key civil society support to future police reform in Nepal.

At the international level among the clearly identifiable outcomes are the Human Rights Committee ruling in favour of two victims who filed petitions under the Optional Protocol with the assistance of AF and its project partner REDRESS; and that the CAT has considered the situation relating to torture in Nepal under its confidential Article 20 procedure.

### **Management and funding**

Although this final evaluation was not charged with examining management, it is important to consider, as it provides context to explain AF's results. 'Management' is a loaded expression in the best of cases and in the human rights sector. Management is often viewed, with justification, with some suspicion. And because of the nature of the work, the type of people it attracts, the intangibility of its aims and the often exceptional circumstances that human rights sector face, human rights NGOs are rarely a model of good management practice.

AF appears to defy this truism. It is very clear that AF is an organisation that has developed management processes and practices. It is the view of the evaluator, with over 20 years of evaluating human rights management, a leader in its field. This can most visibly be seen in its staff: they are highly motivated, satisfied by their work, results driven and very clearly understand the vision of the organisation.

In addition AF has highly developed, not to say groundbreaking (for the sector) systems of information for management. AF is in a class of its own, in terms of its information management. It is not just high by national standards but international organisations like OHCHR compare unfavourably.

The quality of AF's information seems clearly informing its strategy and management. Human rights organisations do not normally work with such clear data. And logically, if information is unclear then a strategy can be justified very loosely on sentiment or political interpretation. Under such circumstances an organisation's strategy can be based on unsubstantiated and often emotive notions about need rather than shaped by objective evidence. Organisations tend to do what they do because of an organisational culture and history. All too many organisations get stuck in a mentality of doing what they do, because, 'that's the way we do things around here'.

AF stands out as a global leader not just because it produces such exceptional (and this word is not used lightly) substantive information but because that same data clearly informs decision making, the shape of the interventions, and the project cycle feedback loop. In other words the strategy and management is not determined by arbitrary notion, or sentiment but rather more on evidence.

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<sup>1</sup> In the first year it was reported at 82.8%, second year it was reported at 86.2% and third year it was reported at 93.3%.

<sup>2</sup> From 6.7% to 18.1% over the three years.

<sup>3</sup> From 47.1% to 44.5% over the funding period.

## Conclusions

The final evaluation repeats the conclusion of the mid-term evaluation. A measurable reduction in torture is an unusual result for any non-governmental human rights project. It is a highly significant result for a project of this moderate financial scale and in a context of poor public security, deteriorating human rights and strong political momentum behind entrenching impunity.

**It is the view of the evaluation that the project is a model of EC funding under the EIDHR budget line. The prevention model and the manner in which the statistics are compiled are groundbreaking and offer, for the first time, the possibility of far greater verifiable indicators for human rights work and information for management.**

**It is of high value for money and with considerable scope for replication globally.**

## **Section One: the European Commission Financing Agreement**

A Financing Agreement between Advocacy Forum-Nepal and the European Commission (EC) for the project entitled “**Prevention of Torture**” (DIDHR/2007/62) was signed on 30 November 2008. Implementation began on 1 December 2008 for a period of 36 months. The total cost of the project was EURO 697,671.03 and the EC provided EURO 558,136.82 or 80% of the project expenditure. The remaining 20% came from support from the British Embassy Kathmandu amongst others.

### **Overall objective(s):**

The overall objective of the project was to contribute to a substantial reduction of incidents of torture and ultimately to prevent torture in Nepal. This was to be achieved through an integrated intervention strategy focussed on preventive police detention monitoring (in areas with a high risk of torture), documentation of cases and patterns of torture, the legal action to obtain redress, advocacy as well as awareness-raising among key stakeholders.

### **Specific objective(s):**

The project had eight objectives:

- Achieve a significant reduction in the prevalence of torture in custody and prevent torture from taking place through regular visits to detention centres by lawyers and documentation of torture
- Secure the human rights of torture victims through legal intervention at police stations
- Protect people better against torture by non-state actors, including through documentation of cases of torture by armed groups in the unstable Terai region as well as Maoist groups
- Ensure legal aid to victims of torture and initiate action in court to obtain redress
- Capacity-building in the medical profession to allow them to better document torture and add weight to cases before the courts
- Organize victims’ groups to do advocacy for truth and justice in relation to past human rights violations as well as ongoing torture
- Organize a forum for key stakeholders to exchange views on reform of the criminal justice system and the introduction of effective legislative, administrative and other measures needed to prevent torture and hold those responsible to account
- Research, review and writing of torture-related laws and policies to recommend for reforms that would allow Nepal to comply with its treaty obligations and allow victims to more effectively seek justice through the courts
- Regular submissions to UN special mechanisms, including the Special Rapporteur on Torture and counter-report to CAT to create sustained pressure on the Government to stop torture and address systemic problems

## **Section Two: the evaluation: purpose, framework and methodology**

### **Overall purpose**

The general objective of the mission was to provide a final assessment and evaluation of the project to ensure that it had met its objectives and fulfilled its contractual requirements

### **Objectives**

The ToRs required that the consultant review the project objectives. This was based on:

- review of existing documentation in addition to those examined during the mid-term evaluation
- further discussions with the project staff of AF, external stakeholders and the international coordinator carried out during the mid-term evaluation

Through this methodology the consultant was charged with:

- Conducting a follow up review of quantitative and qualitative assessment of reports submitted to the authorities/ other forums
- Assessing final project impact
- Ensuring contractual compliance with expected outputs
- Giving particular focus to the political operating context

The evaluation was not charged with examining financial compliance. Advocacy Forum has had extensive independent external audit and these have concluded positively.

### **Evaluative framework and methodology**

The consultant adopted the following methodology to develop an evaluative framework: Following a review of documentation the ToRs were discussed and refined between senior AF team members and the consultant. On arrival in Nepal a planning meeting was held between senior AF staff and the consultant. They discussed the evaluative framework and the qualitative and quantitative indicators that would guide the evaluation. The plan was then shared and discussed with the AF teams.

The consultant met a range of stakeholders at the national level. Both individual and group interviews with AF staff and stakeholders were held. The report was then drafted. The draft was reviewed by AF staff and the final evaluation report agreed. Ben Schonveld, the designated evaluator, conducted the evaluation including the field visit to Nepal in November 2011.

## Section Three: Background: Advocacy Forum

Advocacy Forum (AF) is widely recognised as Nepal's leading human rights NGO. It has developed a reputation for international standards of human rights documentation and advocacy. It has distinguished itself by high levels of professionalism and, importantly in the Nepalese context, unusual levels of political neutrality. These have both helped establish its national and international standing. There was a strong consensus amongst those interviewed, that AFs work, its influence and reach, set it apart from most other human rights organisations.

AF's contribution to human rights advocacy in Nepal has been recognized by Human Rights Watch (HRW), awarding AF "One of Asia's most respected and effective human Rights Organization". AF is a recipient of a number of awards including "Women In Leadership Award" (awarded by the Swiss Agency for Development and Cooperation).

The main activities of the organisation can be summarised as:

- Documentation and Monitoring of Human Rights: visits to detention centres, fact-finding trips, documenting cases of human rights violations; monitoring the functioning police and administrative bodies, and critical review of laws and policies that contradict with international laws.
- Emblematic cases: taking up emblematic cases helps to bring concerted, coordinated and sustained pressures in these cases both nationally and internationally.
- Focused Policy Advocacy: research-based advocacy aiming at reform of policies and laws to comply with international standards and practices; enhancing access to justice for the poor and marginalized, including transitional justice for conflict victims; fighting the culture of impunity; reform of the criminal justice system; and promotion of a fair juvenile justice system in line with international standards.
- Capacity Building of Local Organizations: capacity building measures (skills training, workshops, exchanges and so on) to enhance the organizational and leadership capacity of the relevant stakeholders.
- Legal Aid: legal aid involves legal advice and counselling, legal representation, bringing cases on behalf of victims of human rights violations both at national level and internationally.

## **Section Four: Overview of the Project and Management**

The final evaluation was not charged with examining the management of Advocacy Forum. It was to examine project implementation. But an understanding of AF's management is important to understanding the exceptional results. All NGOs must address well-defined objectives, which will add value towards the achievement of the organization's goals and objectives.

For understandable reasons, AF does not employ formal profit making terminology in its management systems. But in the view of the consultant AF's substantive work appears to have developed into a highly developed (highly unusual for the human rights sector at least) management information system (MIS); a system that provides information which is needed to manage organizations efficiently and effectively.

Good information is at the basis of good decision making within the organisation. AF has developed a system that provides very high quality information but equally uses that information to shape its project management planning both at the national and district level. Concrete examples of strategic adjustments include increasing the number of visits to detention centres with high incidents of torture, increasing the number of sectoral meetings with stakeholders focusing on certain vulnerable groups like juveniles, focusing in on certain groups of detainees held under specific charges like the Arms and Ammunition Act, etc.

The successful MIS supports long-term plans, providing reports based upon performance analysis in areas critical to those plans, with feedback loops that allow the organisation to adapt to immediate circumstance. MIS not only indicate how things are going, but why and where performance is failing to meet the plan.

In AF, this can be seen in its reporting. Not only can AF understand where its strategies are not working but they can tell by how much and, often the data tends to suggest why.

The term is used to refer not only to the information and communication technology (ICT) an organization uses, but also to the way in which people interact with this technology in support of business processes, or in AF's terms, its human rights work.

The mid-term evaluation also made a number of comments on management that were pertinent to understanding the results. The final evaluation found no evidence to suggest that these findings had changed and includes these findings as pertinent to understanding the project's final results.

AF's Project design is highly developed and reflects a nuanced understanding of project cycle management. The goals of the project are clear. The activities are clear. The link between activities and results are clear. The activities are interlinked and mutually supportive. AF demonstrates a very optimal use of available national and international human rights mechanisms.

### **On objectively verifiable indicators**

Results/evaluative indicators are models of good practice. Measuring the performance or impact of any human rights work is notoriously difficult, given the often intangible nature of much of the work. Many NGOs will make a claim to impact, but substantiating that claim



and unravelling their part in a change that involves many stakeholders, is often less than clear.

AF has developed a sophisticated database that provides data to evaluate the quality of its work. The information means that AF can be confident about what it is doing well, what is not working and why. Much of the programmes' success is underwritten by its ability to deliver high value information for results.

## **On leadership and management**

Running large grants of this nature requires significant management capacity. Human rights organisations as a sector do not have a history of prioritising management systems and processes. There are good reasons for this. The culture of human rights organisations, the environment (often one of crisis), the substance, and the personalities that the sector attracts, have not traditionally been people from a management background, nor promoted a management culture that goes beyond fire-fighting.

Moreover, human rights work challenges power in a more explicit and direct manner than the wider development sector. The substance of human rights work involves a direct challenge to the powers and authority of unaccountable states. It also involves the criminal prosecution of members of powerful elites, often from the security forces. As a result, these organisations, at least the effective ones, find themselves the subject of regular external threats.

Under such circumstances of external political crisis and threat, institutional development theory would suggest a number of outcomes. Firstly, a 'big man' culture (a culture of a dominant charismatic leader and often founder of the organisation) is enabled. In management theory, a 'big man' culture is normally regarded as an understandable part of institutional development, but it is ultimately undesirable, as the institution can be held hostage to the ego of the charismatic leader, often at the expense of institutional need.

The theory goes on to conclude that as an NGO develops so the hierarchy should be increasingly flattened. There is also an accompanying discourse that logically argues that NGOs should represent the ideal rather than reflect the culture that they seek to change.

However this desirable outcome is modelled in circumstances of relative political and institutional stability, a functioning rule of law, high levels of public security, and security forces under civilian control and a level of accountability in governance.

Under more uncertain environments, such as those prevailing in Nepal, a strong figurehead may not be wholly undesirable. It may, in fact, be a necessary condition for institutional and individual survival. The strong leader can call in influence to end harassment, and threat of its staff and institution.

Similarly while high levels of internal democracy in institutions may be desirable, there is a trade off in terms of speed at which decision making can take place. Management systems and leadership necessarily reflect the needs of the external environment. Levels of internal democracy must reflect the speed of reaction required by an external environment of crisis.

It is also worth noting that institutional change, more generally, is likely to be slower when there are substantial external threats. As the preeminent human rights organisation in Nepal AF is the clearest target for external pressure. Moreover, the departure of UNMIN in January 2011 and the scheduled departure of OHCHR Nepal in June 2012 are likely to lead to a significant increase in threat levels for leading national human rights organizations,

such as AF. The security logbook of AF already suggests such a situation of increasing attacks on AF lawyers by various ways.

AF is to be commended on its management. Its management systems would appear to compare favourably not just with the domestic sector but equally with many prominent international human rights organisations. An example is demonstrative. AF provides psycho-social counselling to its staff. There is no such training available in many international human rights organisations.

The consultant found an organisation with a highly motivated staff with a high level of commitment and understanding of the vision of the organisation, at least at the national level. The interviews with staff members, particularly those in groups, were unusual in the Nepalese context, for the level of inclusion at the team level. The participants appeared to offer opinions with far less deference to their senior management than comparative organisations.

Furthermore, it should be noted that in 2001 AF was a very small organisation. In 2011 its staff number over one hundred. Managing the transition on that scale and at the same time extending its reach and influence is testament to the management within AF.

The Director was clearly a strong figurehead for the organisation. While doing the mid-term evaluation it was clear that the organisation was planning for her eventual replacement and for decision making to be pushed down to lower levels of the hierarchy. The new Director was appointed in November 2011 as well as changes in the board and wider organizational structure. But it should be recognised that the organisation operates within a social context and potential trade-offs in terms of influence and protection that will limit that rate of change.

## **On gender**

Finally, given the emphasis on gender within the EIDHR programme, the role of Advocacy Forum in advancing the role of women within the sector should be recognised. Advocacy Forum was lead by a young woman. When Advocacy Forum was founded, the human rights sector was heavily male dominated. Advocacy Forum has not only had to challenge the external environment but had to overcome significant sectoral challenges as a result of embedded sexism. Gender balance in the organisation is positive (26% women in average, 40% in the board, 30% in the management committee), with women occupying senior positions within the institution and representing of the staff, is more than in advance of the sector.

## Section Five: evaluation of the overall objective

**Overall objective(s):** The overall objective of the project was to contribute to a substantial reduction of incidents of torture and ultimately prevent torture from taking place in Nepal. This was set out to be achieved through an integrated intervention strategy focussed on preventive police detention monitoring in areas with high risk of torture, documentation of cases and patterns of torture, legal action to obtain redress, advocacy as well as awareness-raising among key stakeholders.

### Summary of results

The data available during the mid-term evaluation showed a steady decline in torture, (where monitoring took place) during the funding period 2008 to 2010. More recent statistics were provided during the final evaluation. In 2011 these showed *an increase* in incidents of torture. The percentage of those persons claiming to have suffered torture while in detention rose from 19.3 of detainees interviewed in 2010 to 24.8 in 2011.

However, while limited by 2011 figures, over the reporting period a reduction in torture of 14% (13.9) has taken place.

This figure appears to be attributable to the intervention. Evaluations attempt to provide a rational assessment of impact, but there are limits to the rationality that can be achieved. The information available in most human rights evaluations is often compatible with a range of somewhat different interpretations. In the case of AF's prevention of torture project that range of possible interpretations appears to be limited.<sup>4</sup>

Moreover, the project increased key protections against torture. Access to a medical check-up during detention is a vital tool allowing detainees to obtain redress given the authoritative standing of medical documentation in court proceedings. Furthermore, putting on record a detainee's condition provides a clear deterrent to further abuse. Access to medical check-ups improved by 12.6% over the funding period.<sup>5</sup>

Another key and highly practical protection is building a practice amongst judges to ask the accused if they have been ill-treated. This practice increased by 170% over the funding period.<sup>6</sup> Finally, illegal detentions dropped by 5.8%<sup>7</sup> over the funding period. It is again the view of this evaluation that the available evidence suggests that these prevention results are attributable to the intervention.

AF remains able to demonstrate a positive overall impact despite a relative decline in impact in the 2011 reporting period. It has strengthened protections against torture. All of this has been achieved in an environment which has been anything but conducive to positive changes.

The final evaluation repeats the conclusion of the mid-term evaluation. A measurable reduction in torture is an unusual result for any human rights project. It is highly significant result for a project of this moderate financial scale and in a context of poor public security and deteriorating human rights. It is the view of the evaluation that this result must propel

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<sup>4</sup> See Advocacy Forum, Completion report, January 2012

<sup>5</sup> In the first year it was reported at 82.8%, second year it was reported at 86.2% and third year it was reported at 93.3%.

<sup>6</sup> From 6.7% to 18.1% over the three years.

<sup>7</sup> From 47.1% to 44.5% over the funding period.

the project into the top tier of EC torture prevention results. It would appear to represent very high value for money.

However the success of human rights work in the non-governmental sector is necessarily, and by definition, dependant on governmental action. Governments are the duty holders in international norms. And without sufficient national or external political will it would appear unlikely that these gains will be sustained in the medium term.

Moreover marked increases in patterns of human rights violations, as the 2011 figures show, have tended to serve as an early warning of further conflict(s). AF has unusually developed human rights indicators and the deterioration should be cause for concern.

### **Detailed examination of the overall objective**

The means to achieving the objective have not changed since the mid-term evaluation. AF posits that torture is being reduced in the detention centres monitored by its lawyers. They argue that the reduction is a direct result of the activities of the programme, rather than any other external influence.

There appear to be four activities that directly influence outcomes. The most obvious is the monitoring itself. The second influence would appear to be the dialogue that takes place between justice sector stakeholders, on the specific issues documented during the monitoring visits (activity six). The third influence would appear to be the legal aid work (activity three) to support legal cases against the police who have tortured or abused detainees. Finally, where domestic remedies are exhausted, international advocacy plays a key role (activity seven). The roles and influence of these individual activities on the reduction on torture are discussed below.

Measuring the performance or impact of any human rights work is notoriously difficult. Much of the work is highly intangible. Many NGOs will make a claim to impact, but substantiating that claim and, unravelling their part in a result that involve so many influences, is often less than clear.

Anecdotally all interviewees, *unequivocally and without exception*, suggested that AF's torture prevention project was of high value. The evaluator interviewed a wide range of stakeholders. This included interviews with respected international human rights experts and members of the police. The words 'flagship' and 'model' were used repeatedly by a wide cross section of respondents.

There was a strong consensus view that AF had developed a model intervention on both torture prevention and the wider issue of impunity.

However, there is substantial evidence in support of impact beyond the anecdotal. AF's detention centre monitoring involves the collection of a consistent set of data, drawn from interviews with detainees. The organisation has developed a standard interview format with a standard set of questions. The number of detainees interviewed provides a very significant sample, for example, during the period December 2008 – November 2011 AF interviewed 12,360 detainees. The data is then entered into a sophisticated statistical package. Data have been collected for the last ten years.

The evaluator was unable to identify evidence of other positive external influences on this result. Interviewees offered no alternative explanation for this improving treatment of detainees.

While it is difficult to offer conclusive or evidence-based results, it would appear possible to discount police reform. Reforms have halted because of the lack of progress of wider security sector reform in the peace process. Other actions from NGOs can be ruled out as no other NGO has a programme monitoring detention. Improvement in police behaviour might be explained by an improving rule of law, but again this and public security appears to be weakening. A general improvement in the human rights situation might also explain the result but once again the wider context appears to be characterised by deteriorating human rights.

Furthermore, what is perhaps most surprising is that senior police officers interviewed by the consultant agreed that AF work was impacting on police behaviour. *All police interviewees underlined that the work of AF had led to improved behaviour of serving officers.* It is perhaps unsurprising that the police would readily agree that human rights had improved within the police. It is less clear why the police would ascribe this positive change to AF, not least when police interviews revealed a very high level of contempt for other NGOs.

One explanation for this fall may be that the presence of the lawyers prevents the torture from taking place. But equally it does seem probable that if the incidence of torture is falling in those detention centres monitored by AF, it would tend to support the assertion of another possible second impact: behavioural change in the police as a result of the intervention.

The monitoring allows a relationship to develop between the AF lawyers and the police at the local level. The relationship, based on daily contact, provides opportunities for dialogue, mutual understanding and learning within the very real context of detention centres and individual detainees' cases. It should be noted that this approach is markedly different from the often theoretical and one-off seminar format for awareness training that is the norm in human rights work in Nepal and the region.

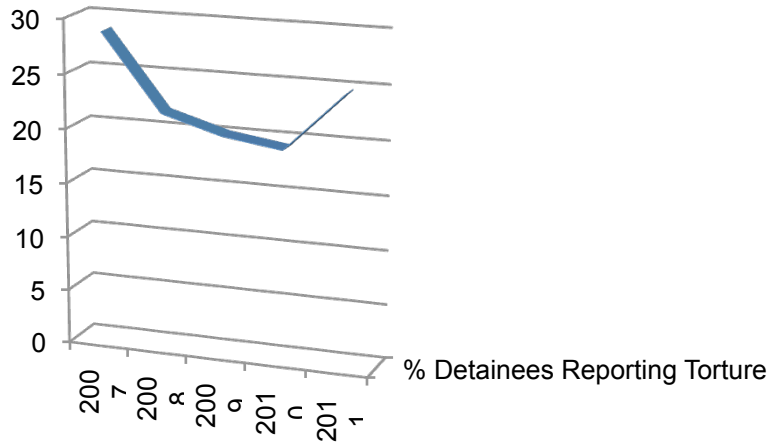
The police shared this view. Police respondents were visibly enthusiastic about the longer term impact on serving officers, in terms of how rights are applied in their day to day work. The relationship between the police and AF is underlined by the provision in 8 districts of separate interview rooms that are set aside *specifically* for AF and other lawyers.

The holistic strategy pursued under this project links the information and evidence collected to the advocacy work at the national and international level, making it more effective as evidence-based advocacy (with statistics and other evidence in hand) during meetings with police, judges and prosecutors. This information is then also submitted to international bodies, such as the UN special rapporteur and the CAT. In addition, cases are submitted to the UN Department of Peacekeeping Operations, which has repatriated one police officer involved in torture against whom a case was pending in the Nepali courts. In addition, lists with names of officers against whom there is prima facie evidence of involvement in torture are submitted to diplomatic missions in Nepal asking them not to provide visas for travel and stud abroad.

### **So what explains the rise of 2011?**

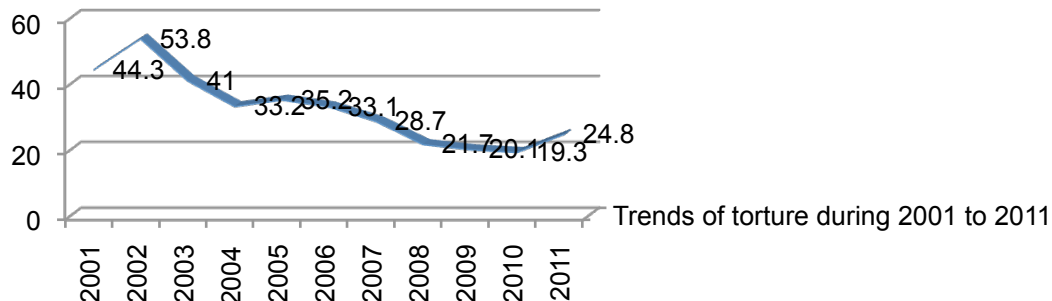
In 2011 AF released statistics showing for the first time in the project period *an increase* in incidents of torture. The percentage of those persons claiming to have suffered torture while in detention rose from 19.3 in 2010 to 24.8 of detainees interviewed in 2011.

## Trends in Advocacy Forum Torture Prevention Monitoring 2007-2011



Firstly it is unclear if the 2011 results is simply an aberration. In the period 2001-2010, AF's monitoring has demonstrated an overall fall in the incidents of torture but over that period there have been periods where the incidence of torture has risen, for example in the period 2005-2006 (see below). Similarly, a breakdown in smaller time segments (such as periods of 3 or 6 months), shows considerable fluctuations. Therefore, it is to be seen whether the increase on an annual basis will be sustained in the year(s) to come.

## Trends in reports of torture from 2001 to 2011



Advocacy Forum has suggested that the reasons behind this rise may be attributed to:

*'The suspected reasons behind the increase were the overall prevalence of impunity, the erosion in the positive influence seen in the immediate aftermath of the end of the conflict, a deterioration in the security situation in the southern Terai region and changes in political parties and ministries, especially the Home Ministry. There was also increasing political influence seen in police institutions with frequent interventions by politicians to bring about transfers<sup>8</sup> of police authorities in year 2011, increasing the sense of political protection among officers, which in turn has reinforced the sense of immunity among them.'*<sup>9</sup>

To this the evaluator would add other reasons including:

- (i) increasing criminality and resultant sense of public insecurity has added momentum to already high levels of public tolerance for state violence;
- (ii) the departure of the international community, including the diminished influence of OHCHR again appears underplayed;
- (iii) the extraordinary political collusion, across the political spectrum, in support of impunity.

As with AF's explanation these represent assertions based on political analysis. In all three cases there are insufficient resources to test the validity of causality. However with regard to point (ii) and (iii), it would appear difficult to separate the extraordinary political climate in favour of blanket immunity for the perpetration of grave violations of human rights including torture.

As Human Rights Watch and Advocacy Forum noted in December 2011:

*"Five years after the end of Nepal's civil war, victims are still waiting for justice... Alleged perpetrators have been appointed to senior government positions and sent abroad on United Nations peacekeeping missions without ever facing an independent and effective criminal investigation.*

*The families of those killed or disappeared have fought hard to obtain justice, but not a single perpetrator has been successfully prosecuted for serious abuses in a civilian court. There is little sign of serious investigation by the police or compliance with court orders directing the authorities to investigate. Leaders of political parties have publicly discussed withdrawing cases relating to the time of the armed conflict that are currently pending before the courts and handing out pardons and amnesties to members of the army and their Maoist opponents."*<sup>10</sup>

The assertion of this evaluation that continued political support for impunity in Nepal would feed through to deterioration in human rights violations is neither new nor original.

In 2008 the Asian Centre for Human Rights warned that the while the Army and the Maoists were being blamed for supporting impunity it should be understood that the other political parties, and an important section of the international community had repeatedly placed short term imperatives before tackling impunity:

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<sup>8</sup> <http://www.highbeam.com/doc/1G1-229185241.html>; <http://xnepali.net/450-police-inspectors-transferred/>; <http://www.ekantipur.com/2011/12/05/top-story/sps-transferred/345031.html>;

<http://www.thehimalayantimes.com/fullNews.php?headline=SPs+transferred&NewsID=311840>; <http://www.ekantipur.com/the-kathmandu-post/2011/01/19/metro/sp-kharel-transferred-finally/217422.html>;

<sup>9</sup> Advocacy Forum, Completion Report, January 2012.

<sup>10</sup> <http://www.hrw.org/news/2011/12/01/nepal-no-amnesties-wartime-abuses>

*It should be understood that the 'democratic actors' 'Both the UML and the NC must accept a large measure of responsibility for the failure to tackle impunity. Impunity did not start during the Royal takeover. For example in 1992 GP Koirala was Prime Minister. And it was Koirala who buried the government inquiry into the human rights violations committed during the first (1990) People's Movement – the Mallik Commission. The report was never published and nor was any action ever taken.*

*Similarly the majority of the Army's violations were committed under the nominally democratic Premiership of Nepali Congress leader Sher Bahadur Deuba. Many of Nepal's nominally 'democratic' politicians have themselves overseen large scale violations of human rights.<sup>11</sup>*

## **Conclusions**

Advocacy Forum is a NGO with limited resources and limited (albeit exceptional) influence. Mandira Sharma, the then Director of Advocacy Forum in December 2011 noted: "Accountability for crimes is a precondition for improved governance, justice and the rule of law."<sup>12</sup> *Ceteris paribus*, an absence of accountability will feed into the opposite. In seeking to understand the impact of Advocacy Forum's intervention, it should be underlined that the political context will ultimately define the long term success or otherwise of projects.

In conclusion, it is the view of this evaluation that the negative figures in 2011 should be seen in context. To have realised any tangible result should be regarded as a success under these conditions. And it is testament to the strength of the intervention that Advocacy Forum has been able to achieve far more than should be possible in the prevailing environment.

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<sup>11</sup> <http://www.achrweb.org/Review/2008/216-08.html>

<sup>12</sup> <http://www.hrw.org/news/2011/12/01/nepal-no-amnesties-wartime-abuses>



## Section Six: Evaluation of the detailed objectives

### Activity 1: Detention Monitoring

**Activity target:** In the first 12 of the 36 month project period Advocacy Forum (AF) aimed to expand its existing program of detention centre visits from 15 to 20 districts.

**Activity outcome:** AF fulfilled the objective on time and on budget. AF expanded its program of regular visits to places of detention from 15 to 20 districts in accordance with the timeframe stipulated in the Financing Agreement.

During funding project period, AF visited a total of 12,360 detainees. Among the detainees visited 11,360 were male, 1000 were female. 2,605 detainees claimed that they were tortured or ill-treated. 848 juveniles claimed that they were subjected to torture and ill-treatment.

In the project funding period, as discussed in more detail under the overall objective, reports of torture dropped by 14% over the funding period. There appear to be satisfactory grounds to attribute the result to the work of the organisation.

The project increased key protections against torture. Access to a medical check-up during detention is a vital protection for detainees given the authoritative standing in court proceedings and putting on record the detainee's condition provides a clear deterrent to abuse. Access to medical checkups improved by 12.6% over the funding period.<sup>13</sup>

Another key and highly practical protection is building a practice amongst judges to ask detainees if they have been ill-treated. This practice increased by 170% over the funding period.<sup>14</sup> Finally illegal detentions dropped by 5.8%<sup>15</sup> over the funding period.

At the international level among the clearly identifiable outcomes are the Human Rights Committee ruling in favour of two victims who filed petitions under the Optional Protocol with the assistance of AF and REDRESS; and that the CAT has considered the situation relating to torture in Nepal under its confidential Article 20 procedure.

**Practical implementation challenges:** In the original project proposal, AF proposed to increase monitoring to 22 districts during Year two, and to 25 during Year three. The proposed expansion was not possible as the Nepal Police Unit refused permission for the expansion. The security situation, particularly in the Terai, was another restriction. The EU was informed of these changes.

Cases of torture, identified by detention monitoring, are referred to legal aid support and wider advocacy work. There is a strong strategic logic to the activities. Monitoring separated from the legal assistance and advocacy would have no 'teeth' and its prevention impact would be reduced.

Nevertheless, both legal assistance and wider advocacy, often involving referring individual cases to the international community, creates friction between the police and the AF monitoring. Put simplistically, AF's relationship with the police is positive where AF's interventions remain informal and advisory. But when AF moves to bring formal charges

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<sup>13</sup> In the first year it was reported at 82.8%, second year it was reported at 86.2% and third year it was reported at 93.3%.

<sup>14</sup> From 6.7% to 18.1% over the three years.

<sup>15</sup> From 47.1% to 44.5% over the funding period.

against a police officer or register a complaint (First Information Reports or complaints under the Torture Compensation Act), the relationship deteriorates. Denial of access is the usual outcome.

AF has developed a graded set of responses. In some cases access can be restored at a local level. AF will contact and discuss and resolve the issue with the local police directly. If access is not restored, AF communicates higher up the police hierarchy. But if the access issues continue, AF will then request the national level police human rights unit to intervene. And in many cases the access is restored. If these domestic remedies fail then international mechanisms and diplomatic pressure are deployed.

But this fragile and often tense relationship appears to be desirable and has real value. Testing, losing and regaining access to police detention should be viewed as part of the process of gradually shifting attitudes within the police. This balance is most clearly underlined by the fact that while AF is legal action against the Assistant Inspector General of the police, its lawyers continue to have access.

The discussion of the wider political context in the overall objective section (see above), are also pertinent to understanding the fragility of these gains.

## **Activity 2: Provide legal aid**

**Activity target:** In the 36 month project period, Advocacy Forum was expected to provide legal assistance and paralegal services to at least 1,000 detainees over the three years of the project. Around 100 cases seeking compensation for torture under the CRT Act were to be filed during the project period. Similarly, a total of 50 victims were to receive compensation and at least 300 detainees would be released from illegal detention. Furthermore, for the most egregious cases, submissions would be made to the UN Special Rapporteur on Torture and relevant INGOs be provided with full documentation to ensure international pressure was kept up to supplement the action taken in the courts.

Project outcome: the legal aid component appears to be well run in the Nepal context. It appears to be realising its objectives, within a difficult operating context.

During the three years project period, AF provided legal aid to 1,684 detainees (93 women and 1591 men). As a result, 131 detainees were released from illegal detention.

AF provided legal representation on behalf of 42 victims of torture between December 2008 and November 2011. In 19 cases, the court awarded compensation and in 9 cases it recommended departmental action. This is less than originally envisaged in the project proposal. External circumstances would appear to credibly justify the shortfall: 'victims have come to realize that the judicial process under the Torture Compensation Act is very lengthy; that they will have to face the perpetrators in the court during each hearing and that the state does not provide security to them and their families, in event of threats. Furthermore, any victim wanting to file a case while still in police custody, will also face the risk of having police filing false charges against them in reprisal for being taken to court for damages by the victim. In addition, the ultimate amount of compensation allocated by the court is very low, and does not include the costs incurred by the victims during the court procedures'.<sup>16</sup>

Of the 81 cases filed by AF between 2003 and 2010, only 16 (19.74%) were concluded; and 33 (40.77%) were pending in the court. Twenty eight cases (34.56%) were dismissed by the

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<sup>16</sup> Advocacy Forum, Completion Report, January 2012

courts, half of which on the basis of insufficient medical evidence. The average length for a case to be dismissed was 18 months. The average length of time for a decision to be passed in favour of the plaintiff in the district courts was 25.4 months.

AF also provided legal support for age verification to 275 juvenile detainees.

Once again all respondents of the evaluation suggested that the legal aid was of high value and the activity was held in very high regard. AF appears to provide a valuable service in the absence of effective government provision. The legal aid work clearly adds 'teeth' to the monitoring. It informs the national and international advocacy activities.

As has been discussed above there are multiple implementation challenges. However the process of bringing each individual case to court is again documented in detail and entered into the database. The long term data on the failings of the system can be documented with a high degree of credibility and inform the legislative reform and advocacy activities.

In addition to the challenges discussed in monitoring, the primary challenge facing this activity is the lack of legislation to enable criminal investigations to be initiated. The existing penal code provides for assault and battery but to use this would strengthen the government's case to not enact torture legislation and weaken advocacy.

The Torture Compensation Act (1996) has powers to compensate and disciplinary action. However, police disciplinary action is normally inconsequential and includes transfer, reprimand or block promotion. This can in no sense be considered appropriate punishment for a grave crime.

Other challenges include the attempts by the police to obstruct justice. Cases are filed but are regularly withdrawn, as the victim is subjected to a range of threats. The police regularly refuse to register a case.

Even where a case is registered the police regularly attempt to destroy and weaken evidence. Similarly, a total of 45 First Information Reports (formal complaints) on torture cases have been taken to police stations for criminal investigation. However, only one case has been registered. In most of the cases, the police officer stated there is no legislation for the criminal investigation of cases of torture. Finally, medical evidence is weak and often leads to acquittal (discussed in the medical training section).

### **Activity 3: Protect people better against torture by the CPN-Maoist and other non-state actors, including through documentation of cases of torture**

**Project target:** AF was expected to document an estimated 100 cases of torture by Maoist, Madeshis and other non-state armed groups during the project period. Legal action was to be initiated and perpetrators to be made accountable. In at least 30 cases, over the three years, victims were to file cases seeking criminal charges against the perpetrators. This was intended to have a deterrent effect and torture by non-state groups would decrease.

**Project outcome:** A total of 243 cases of torture and other ill-treatment by non-state actors have been documented from December 2008 to November 2011: 91 cases in the first year, 59 cases in the second year and 93 in the third year.

During this project period, AF communicated 10 cases of acts amounting to torture by non-state actors to the NHRC and 4 First Information Reports (FIRs, police complaints) against Maoists were filed.

Criminal cases appear unlikely to reach the projected target as a result of the increasingly difficult public security environment and continuous failure of the government to enact

legislation even after the order of the Supreme Court. From December 2008 to November 2010 only 7 cases of torture by non state actors (Maoists) were filed with police for criminal investigation. However, only one torture and attempted murder case by the Maoists were among those filed.

**Implementation challenges:** The police have refused to register cases against the Maoists, for fear of retribution and stating lack of clear legal frame-work. Moreover as public security has deteriorated and armed groups proliferated, it has become increasingly difficult to distinguish human rights violations from criminal acts and hence to decide which legal framework to apply. The undesirable impact of this has been exploited by those opposed to the peace process, who have attempted to create the impression that AF's work is biased in favour of the Maoists.

#### **Activity 4: Capacity-building in the medical profession**

**Activity target:** by the end of year 3, AF was expected to train at least 100 doctors around the country and increase awareness and professionalism in this target group. This in turn was to result in stronger evidence being produced to the courts and to increase the likelihood of justice being done for the beneficiaries.

**Activity result:** in terms of providing training, it would appear that the activity was completed on time and within the funding period. Nepal's most senior forensic doctor reported that medical reporting is improving as a result of the training. There were 187 trainees of which 88 were medical doctors. The format of the training changed somewhat as is described in the following paragraph.

The training was slightly re-modelled following the feedback from medical professionals. They suggested that as these trainings aimed to improve the quality of medical evidence it would be important that they understand the value of their work within the justice system. So AF added judges and other members of the judicial process to the training. Another change recommended by the participants of the trainings, was that instead of having international experts, small trainings were done outside Kathmandu by Nepalese experts. This change was communicated to the EC and the budget revised accordingly.

**Implementation challenges:** The primary implementation issue is the bureaucratic resistance of line Ministries to release the attendees to the meetings. AF reported that additional manpower had to be expended in gaining permission, but it has proved worthwhile.

While the quality of the medical reports appears to be improving there are clear limits on the rate of change given the negative operating environment that includes threats against the medical profession and the poor resourcing of the health sector.

#### **Activity 5: Assist victims' groups to advocate for truth and justice in relation to past human rights violations as well as ongoing torture**

**Target objective:** over the 36 month project period AF was expected to assist in the establishment of torture victims' groups and the development of the groups' advocacy programs for truth and justice, including the organization of regular events.

**Target outcome:** A total of 42 victims groups were formed during the three years of the project period. A total of 6, 6, 3, 4, 21 and 2 victims groups were formed during project period from December 2008 to May 2009, June 2009 to November 2009, December 2009 to

May 2010, June 2010 to November 2010, December 2010 to May 2011 and June 2011 to November 2011 respectively, comprised of victims of all categories including torture. These victims groups comprise victims of torture, family members of the disappeared and killed.

The formation of victims groups is a process. The results in terms of advocacy are likely to show only into the longer term, though in the short to medium term, it is clear that their activities have helped to prevent sweeping amnesties and pardons from being institutionalized. Globally, victims groups have played a significant role in keeping the issues of the relatives on the political agenda and it is hoped that they can play this role in Nepal in the medium to long term.

AF noted anecdotally that their experience suggests that taking part in these groups appears to have an empowering role for people as part of their healing. AF pointed to a number of examples of victims whose work with the groups had led to measured increase in mental health. Of similar note was the increasingly assertive role played by women victims within the groups.

The victims groups have become very visible campaigning for their rights. This has included producing advocacy work and demonstrations.

**Implementation challenges:** the primary challenges facing the project have been tensions between Maoist and Army victims of human rights violations. There are victims groups that are clearly affiliated to the Maoists (this is understandable in the context).

Initially, these victims, coming from different political ideologies, victims of state and Maoist would not cooperate with each. But AF has had some success in bringing these groups together arguing that no matter who the perpetrators were the pain, suffering, anguish that victims have is the same and a collective voice is likely to have more impact. Victims groups are emerging as a powerful voice in demands for justice, truth and reparation as they have done in other conflicts. Another challenge has focussed on managing expectations. Most victims are, unsurprisingly keen to seek quick justice but the process, not least because of the enormous political resistance, is often very long.

### **Activity 6: Promoting a forum for key stakeholders**

**Target Objective:** During the course of the three year program, AF planned to hold 30 justice sector stakeholder consultations. The outcomes of the activity were designed to increase awareness of the use of torture and examine practical local solutions to decrease torture. The outcomes from these meetings were to feed into the advocacy for changes to laws and policies at the national level and to have direct benefits for the targets and the beneficiaries at the district level by increasing awareness among targets and influence day-to-day practices in police stations, local hospitals and courts.

**Target outcome:** AF fulfilled the contractual obligations of the EC under this activity heading. The outcomes of this activity should be seen as a complementary activity to the monitoring actions and has contributed to the overall decrease in torture. The monitoring actions provide the individual situations and individual cases that are discussed at these meetings.

By focussing on real situations the meetings avoid the usual abstract discussion of international law. The meetings provide a forum where informal pressure can be applied to the various arms of the justice sector on specific issues and individual cases.

AF gave numerous examples where common understanding was built and contributed to progress on individual cases and indeed behavioural change in the sector. Based on the statistics produced by the AF database, this anecdotal evidence can be substantiated.

|   | December 2008 to February 2009 | April to June 2010 | July to December 2011 |
|---|--------------------------------|--------------------|-----------------------|
| Provided health check-up                        | 83.3%                          | 93.1%              | 94.5%                 |
| Judge asked about torture at the time of remand | 7.6 %                          | 16.8%              | 15.7%                 |
| Taken to court within 24 hours                  | 46.3%                          | 52.7%              | 55.4%                 |

### Activity 7: Regular submissions to relevant UN bodies, including the Special Rapporteur on Torture

**Target objective:** Over the 36 months, AF was to prepare 18 briefings (an average of 6 per year), three annual reports and 50 individual submissions to various UN mechanisms with the assistance of the international coordinator.

**Target outcome:** The recipient fulfilled the contractual obligations under this activity heading. In realized the objectives. The use of the international system for the realisation of justice remains an EC priority, and its use by AF conforms to the same logic.

The international system provides a useful mechanism of last resort with regard to ongoing access issues under the monitoring activity. Where domestic remedies have been exhausted, international intervention has been helpful in regaining access. AF with the assistance of its partner under this project, the REDRESS Trust, submitted three cases involving ten victims and 16 of their family members to the Human Rights Committee under the Optional Protocol procedure and made further submissions in three other cases already pending before the Committee. In addition 17 individual cases were submitted to the Special Rapporteur on Torture under the Urgent Action procedure. Additional submissions were made to the Committee against Torture and other UN special procedures (see Activity 7 below for full details). Among the international NGOs to whom information was regularly submitted are: Amnesty International, the Asian Human Rights Commission, and World Organization against Torture (OMCT), Human Rights Watch, and the Asian Federation against Involuntary Disappearances (AFAD), the International Commission of Jurists (ICJ) and the Association for the Prevention of Torture (APT). The AHRC has a separate webpage concerning issues related to Nepal, especially torture.<sup>17</sup> OMCT issued 22 appeals on behalf of victims of torture in Nepal (six and one follow-up in 2009; 7 and 3 follow-ups in 2010 and 2 and one follow-up in 2011 as well as 2 general appeals in 2010). A total of 5 quarterly briefings, three six-monthly briefings and one thematic briefing summarizing the trends and patterns in torture around the country and the state's response to it were also prepared and disseminated during this time.

AF's work is used as primary source material by the various special and urgent mechanisms based in Geneva. The discourse between the UN system and the Nepal government has developed. Reading the submissions of the government of Nepal in response to international concern is suggestive of an improvement although unquantifiable. AF

<sup>17</sup> <http://www.humanrights.asia/countries/nepal>

documentation sits behind the international interventions. Among the clearly identifiable outcomes are the fact that the Human Rights Committee held in favour of two victims who filed petitions under the Optional Protocol with the assistance of AF and REDRESS; and that the CAT has considered the situation relating to torture in Nepal under its confidential Article 20 procedure. It is clear that there is impact albeit unquantifiable.

### **Activity 8: Research, review and writing of torture-related laws and policies to recommend for reforms**

With the help of its partner in this project, the REDRESS Trust, Advocacy Forum was expected to review relevant existing legislation and on the basis of these reviews and considering Nepal's international obligations, make recommendations for amendments and new laws to be introduced. Those recommendations were to be shared to diplomatic community, donors and governments. Advocacy Forum was also to lobby parliamentarians to amend legislation, and did so in relation to a draft penal code, criminal procedure code and sentencing bill. In addition, Advocacy Forum provided model legislation to criminalize torture for legislators and reviewed 20 laws for their compatibility with international standards.

The work under this activity is ongoing, with some impact to date, in particular the positive judgement of the Supreme Court in the public interest litigation case filed by AF challenging the quasi-judicial roles of Chief District Officers. In addition, the comments on a draft penal code, criminal procedure code and sentencing bill submitted to the government by AF and REDRESS may in due course prove extremely significant contribution to strengthening the legal framework setting out the functioning of the criminal justice system.

REDRESS has clear expertise in the torture related legislation and has added significant value to the work. Results will depend on political progress outside the influence of AF.