

TORTURE STILL CONTINUES

A Brief Report on the Practice of Torture in Nepal

2006-2007

ADVOCACY FORUM

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INTRODUCTION

The practice of torture by the security forces, the police, and the Maoists continues in Nepal despite the gains of the People's Movement of April 2006. Existing legislation, particularly the Interim Constitution and the Torture Compensation Act, fails to properly criminalise acts of torture. Though many personnel of the state security agencies genuinely believe in respecting human rights, the Nepal Army and the police have not adequately addressed the prevalent use of torture and other degrading treatment. In addition, the political elite has failed to offer leadership and guidance to rid Nepal of its torture problem. For example, though the Torture Compensation Act is being revised, politicians are not holding discussions with relevant stakeholders about the reforms needed.

As Advocacy Forum has grown since 2001, the number of documented cases of human rights violations and abuses has increased every year. Yet, the People's Movement has not, in the experience of Advocacy Forum attorneys, yielded any significant improvements in the human rights front.

Now, more than ever, is the time to address the human rights deficit in Nepal. Active engagement from the Nepali State, civil society, and the international community is required to defeat the culture of impunity. Holding those responsible for human rights violations and abuses accountable for their actions is the first step. In addition, increasing detention centre monitoring and addressing the transitional justice needs of Nepalis can help promote a culture of respect for human rights

The United Nations International Day in Support of Victims of Torture, in the words of former Secretary-General Kofi Annan, "is a day on which we pay our respects to those who have endured the unimaginable. This is an occasion for the world to speak up against the unspeakable." In honour of this important day in the international community, this publication documents the systematic practice of torture in Nepal and makes recommendations to combat the problem. Our hope is that this report energizes the discussion on human rights violations and abuses in Nepal, particularly torture, so that policymakers and civil society alike aggressively address the lack of respect for human rights norms.

I would like to acknowledge the support of those police detention centres that have guaranteed their detainees' access to lawyers and have allowed Advocacy Forum lawyers to assess the treatment of detainees. I would also like to express my appreciation for the openness of the Human Rights Cell of the Police to engage with Advocacy Forum in addressing the problem of torture in police detention centres. Finally, I would like to thank my colleagues at Advocacy Forum for their assistance in preparing this report and all the victims of torture in Nepal who shared their experiences with us.

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EXECUTIVE SUMMARY

With the end of absolute royal rule following the People's Movement of April 2006 and the resulting peace agreement that ended hostilities between the Maoists and the Government, Nepalis hoped for a *Naya Nepal* characterized by the rule of law, respect for human rights, and democracy. However, one year after the historic *Jana Andolan*, Nepal still suffers from an enormous deficit in human rights protections. Torture still continues, the culture of impunity reigns, and victims continue to suffer from the mental and physical wounds of egregious human rights violations and abuses.

AFTER JANA ANDOLAN: HUMAN RIGHTS VIOLATIONS AND ABUSES CONTINUE

During the conflict, torture was widely practiced in Nepal. In fact, UN Special Rapporteur Manfred Nowak, after completing a fact-finding mission in Georgia, Mongolia, Nepal, and China, concluded that Nepal was the only country of the four that systematically conducted torture.¹ Shockingly, a Nepali official admitted to Nowak that “a little bit of torture helps.”²

Despite the abdication of absolute rule and the end of armed hostilities between the Government and the Maoists, violations and abuses have been rampant since the People's Movement. Advocacy Forum alone has documented 1,313 new cases of torture. Though the power of the military to detain civilians has been curtailed, the Nepal Army (NA) still arrests and detains civilians and inflicts torture upon them. AF has documented 17 cases of torture, 4 cases of rape and 6 cases of illegal detention of civilian by the military after April 2006.

Advocacy Forum's documentation of police detention centres has shown that the People's Movement has not led to any significant amelioration in detention practices. Of the 3,908 detainees interviewed since April 2006, 27.6% were subjected to acts of torture. AF has also documented 67 cases of torture, 1 case of rape, and 96 cases of abduction committed by the Maoists since the People's Movement of April 2006.

Common methods of torture include electrocution; sexual abuse and rape threats; restriction of food, water, and use of toilet; excessive beating by iron rods and bamboo sticks, especially on the soles of the feet and back; and death threats and threats of indefinite detention.

THE FAILURE OF THE NEPALI LEGAL SYSTEM TO RESPOND TO THE TORTURE PROBLEM

Nepal is bound by several international treaties prohibiting the practice of torture, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). Despite these international obligations, Nepal's implementation efforts have been wholly insufficient. Laws that domestically regulate the international prohibition against torture are shallow and poorly implemented. Nepal also suffers from a lack of independent monitoring of detention centres and independent inquiry into torture allegations. Furthermore, the legal system does not offer sufficient opportunities

¹ UN News Centre, “Torture ‘conducted on systematic basis’ in Nepal”: UN Rapporteur.” 2 May 2006, <http://www.un.org/apps/news/story.asp?NewsID=18325&Cr=Nepal&Cr1> (last visited 13 June 2007).

² Ibid.

for victims of torture to obtain remedies and make perpetrators accountable for their criminal acts.

The main pieces of legislation regulating the prohibition against torture in Nepal are the Interim Constitution and the Torture Compensation Act. The Interim Constitution, promulgated in 2007, criminalises torture for the first time in Nepal. However, it only criminalises torture that occurs during official detention, whereas the Convention Against Torture obligates Nepal to criminalize any act of torture that is committed or instigated by an official within Nepal's territorial jurisdiction. Furthermore, the Torture Compensation Act is too narrow to meet international standards; it does not even criminalise the practice of torture, making the Act inconsistent with the Interim Constitution. The Act does not obligate the Government to take institutional action against a perpetrator of torture. Instead, perpetrators may be subjected to "departmental action," such as demotions, suspensions, and delayed promotions.

Laws and institutions that regulate torture in Nepal have not been wholeheartedly implemented to deter perpetrators from committing torture. Even the provisions of the Torture Compensation Act and the Interim Constitution, in addition to their facial inadequacy, are not implemented. In fact, the Special Rapporteur on Torture, after completing his mission to Nepal, concluded that "basic requirements are not respected by the police, armed police, or the RNA, such as timely access to a lawyer, bringing suspects before a judge within 24 hours of arrest, or medical examinations upon arrest or transfer."³

The culture of impunity that reigns in Nepal is further strengthened by the lack of effective institutions to monitor and take action against human rights violations, including torture. Though the National Human Rights Commission (NHRC) is authorized to request governmental action, including the provision of compensation, in cases of human rights violations, the Government has denied the Commission access to intervene in many cases. In addition, the recommendations of the NHRC are hardly observed by the Government.

Victims who seek legal remedies face significant hurdles. First, Nepal does not offer any sort of protection to victims and witnesses who are threatened with future bodily harm by perpetrators. Second, geographical barriers to consulting with lawyers and filing claims, in addition to many victims' lack of knowledge of legal remedies, make civil action against perpetrators difficult. Third, the Torture Compensation Act's requirement to file a claim within 35 days of the alleged act of torture or release from detention denies victims an adequate opportunity to seek legal redress for the wrongs committed against them. Fourth, the Interim Constitution and the Torture Compensation Act lack any mention of providing for a victim's rehabilitation needs. Fifth, the Torture Compensation Act places a ceiling on the amount of compensation at a paltry sum of Rs. 100,000, approximately \$1,610. Sixth, the legal aid regime in Nepal, implemented under the Legal Aid Act, does not attend to the needs of victims of human rights violations. In addition to all of these deficiencies, the Torture Compensation Act deters potential claimants from seeking relief by imposing fines on those parties found by a court to be making groundless claims.

³ U.N. Economic and Social Council [ECOSOC], Commission on Human Rights, *Civil and Political Rights, Including: The Questions of Torture and Detention: Report by the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, ¶20, U.N. Doc. E/CN.4/2006/6/Add.5 (9 January 2006) (prepared by Manfred Nowak).

FACING IMPUNITY: THE NEED FOR TRANSITIONAL JUSTICE AND URGENT REFORM

Unquestionably, one of the primary challenges that Nepal currently faces is tackling the culture of impunity. To date, the Government has failed to properly investigate and prosecute a single case of extrajudicial execution, enforced disappearance, or torture. Despite changes in leadership, the NA has failed to cooperate with investigations about the fate of hundreds of disappeared Nepalese and other cases of human rights violations. The police have lacked the courage and professionalism to bring perpetrators of violations to justice. Moreover, popular demands for a comprehensive transitional justice mechanism have also been ignored. Therefore, because perpetrators of human rights violations continuously enjoy impunity and victims are routinely denied justice, popular confidence in the potential success of the People's Movement is waning.

As there can be no concrete political stability and democracy without addressing past abuses, a comprehensive program for transitional justice, including a Truth and Reconciliation Commission and prosecutions, is needed to lay the foundations for sustainable peace. Aggressively and fairly unpacking the truths of human rights violations and abuses during the conflict and years of oppression will give Nepalis a better, unified understanding of the structural, political, social, and economic reasons that permitted these atrocities to occur. In turn, this will allow current policymakers to address the roots of the conflict in order to prevent a further outbreak of violence. The pursuit of transitional justice will provide a forum for survivors of atrocities to present their stories and receive reparations for their pain. Moreover, holding perpetrators accountable for their actions can help break the cycle of impunity and lay the foundations for the rule of law and indeed, *Naya Nepal*.

The Government of Nepal must also urgently address the legal issues that perpetuate the practice of torture and the culture of impunity. A law must be enacted which gives full breath to the international prohibition against the practice of torture so that any act of torture committed by a state official is criminal offence in Nepal. Nepal must also implement measures to ensure that the acts of torture are properly investigated and perpetrators are held accountable for their actions. The torture compensation scheme must be overhauled to provide victims with opportunities for fair and adequate compensation, including rehabilitation. Finally, independent checks on human rights practices in Nepal must be made available. In addition to strengthening the capacity of the NHRC, Nepal should ratify the Optional Protocol to the Convention Against Torture (OPCAT). The implementation of the OPCAT regime would obligate the Nepali state to create a national inspection mechanism and to host international inspections of its detention facilities; in turn, this will help ensure that Nepal is meeting its international commitments. Ratifying the OPCAT would also send a clear message to the people that the Nepali Government is serious about representing them and respecting their inalienable human dignity.

Nepal currently stands at the crossroads between a future that honors and enforces human rights and the rule of law and a future that merely perpetuates past inaction and abuse. One year since the so-called reemergence of democracy in Nepal, it appears that the political leadership has merely allowed the human rights practices of the pre-*Jana Andolan* era to continue indefinitely into the future. However, the desires for democracy articulated in the People's Movement and the demands from Nepalis to live in a country characterized by the rule of law must not be lost in the noise of political bickering. Torture and the deprivation of fundamental human rights can never be justified. It is time for Nepal to finally learn this lesson.

TORTURE STILL CONTINUES

On 24 April 2006, King Gyanendra abdicated absolute rule in the face of *Jana Andolan*, the People's Movement. The abdication of absolute royal power and the resulting peace process with the Maoists presented an opportunity for Nepalis to finally organize their politics democratically and to implement a culture of respect for human rights after years of repressive and corrupt governance, civil conflict, and anarchy.

Notwithstanding the hope and jubilation following the *Jana Andolan*, many Nepalis continue to voice concerns about the country's human rights and political situation. Though the Interim Constitution prohibits torture, the systematic practice of torture and the inability of victims to seek justice are still widespread in Nepal. The Government has failed to properly investigate and prosecute a single case of extrajudicial execution, enforced disappearance, or torture. Despite changes in leadership, the Nepal Army (NA) has failed to cooperate with investigations about the fate of hundreds of disappeared Nepalese and other cases of human rights violations. Though the military's power to detain civilians has been restrained, many victims who were apprehended by the security forces still struggle with the mental and physical wounds of torture. Moreover, torture in police detention centres remains rampant to this date.

The perpetrators of the human rights violations continuously enjoy impunity and victims are routinely denied justice. This has only strengthened the culture of impunity and lowered the people's confidence in the potential success of the People's Movement. Popular calls for a comprehensive transitional justice mechanism have also been ignored. Nepal has witnessed a number of commissions of enquiry that have been empowered to investigate and reveal the facts of human rights violations; yet not a single recommendation has been implemented. The latest report of such probes, the Rayamajhi Commission, has not been made public despite the persistent demands from domestic groups and the international community. Currently, Nepal is awaiting Constituent Assembly elections. There is a pervasive fear amongst Nepalis and the victims of the conflict that their quests for justice will go unnoticed, and that perpetrators will not be vetted out in the elections.

THE ALL TOO COMMON STORY OF MAINA SUNUWAR

The disappearance, torture, and murder of Maina Sunuwar highlight the human rights violations and the culture of impunity that has continued to reign in Nepal. Advocacy Forum has documented dozens of such heinous cases where victims are routinely denied justice by the failure of the Government to prosecute perpetrators.

On 17 February 2004, then-Royal Nepal Army soldiers (now Nepal Army) apprehended and disappeared 15-year-old Maina Sunuwar and took her to the Birendra Peace Operations Training Centre in Panchkhal. Prior to the incident, Maina's mother, Devi Sunuwar, witnessed the gang rape and killing of her niece by the security forces. When the plainclothes security personnel arrived at Maina's home, they initially asked for her mother. As Maina's mother was not at home at the time, they detained Maina and told her father that Maina would be returned if he brought his wife to the army barracks. Once Maina was detained, according to the Court of Enquiry Report, two captains ordered soldiers to repeatedly submerge Maina's head in drum of water for one-minute intervals. When Maina would not

answer their questions, the soldiers applied electric shocks to her wet feet and hands four to five times. Soon after, Maina started to vomit and foam at the mouth. She died before medical assistance could arrive. Those complicit in her torture and death attempted to cover-up the crime by shooting her in the back of the head and then burying her body in the grounds of the Training Centre.

On the several attempts that Maina's parents tried to find their daughter, the army denied her arrest and detention. Villagers told Maina's parents that they saw security officials bringing two girls into the camp on the morning of 17 February. After Maina's parents brought this information to the attention of the army, army personnel promised to investigate why the villagers thought Maina and another girl were taken to the detention centre. The army also provided false information to human rights organisations and the diplomatic community. With the continuing efforts of Maina's parents and human rights organisations, Maina's body was only exhumed in March 2007 from a compound near the Birendra Peace Operations Training Centre.

In a sham proceeding in September 2005, a Court Martial found three officers guilty of negligence and "not following the proper procedure" with respect to disposing Maina's body; they were imprisoned for six months. The two captains were ordered to pay Rs. 25,000 in compensation to Maina's family and were held to be ineligible for promotion for a period of one year. One colonel was ordered to pay Maina's family Rs. 50,000 in compensation and was held to be ineligible for promotion for two years.

In November 2005, Maina's family, after facing much initial resistance, filed a First Information Report (FIR) in Kavre District Police Office (DPO) naming Colonel Babi Katri, Captain Amit Pun, Surendra Adhikari, and Niranjan Thapa responsible for Maina's death. No investigation ensued. Even after fourteen months of the initial filing, the police have not submitted the case to the public prosecutor, as required by the State Cases Act.⁴ The NA has failed to cooperate with the DPO, refusing to respond to DPO requests for information and interviews and claiming that the captains and soldiers cannot be prosecuted again on double jeopardy grounds. The NA has also insinuated that Maina was responsible for her own death. Maina's mother filed a writ in the Supreme Court, seeking a mandamus order to compel the police and the army to complete the investigation and submit it to the public prosecutor. On 8 May, the Supreme Court ordered the DPO Kavre and the NA to explain their delays in handling Maina's case and to produce the original files of the Court of Enquiry. However, more than one month since the Supreme Court's decision, no documents have been submitted.

Maina's story – a tragedy involving indiscriminate violence against a civilian coupled with the absolute absence of any form of justice – encapsulates the human rights situation that has plagued Nepal before and after the People's Movement. Since its inception from 2001 to 2007, Advocacy Forum alone has documented 449 cases of extrajudicial killing, 554 cases of disappearance, and 3,584 cases of torture.

⁴ The State Cases Act stipulates that the must police investigate the case and submit the preliminary investigation report within 25 days to the public prosecutor. Victims do not have direct access to the court.

TORTURE AND OTHER HUMAN RIGHTS VIOLATIONS AND ABUSES IN NEPAL BEFORE THE PEOPLE'S MOVEMENT

The Security Forces and the Police

During the decade-long war that besieged Nepal, civilians suffered tremendously at the hands of the security forces and the Maoists. Common methods of torture included electrocution; hanging the detainee's body by his/her arms for several hours; sexual abuse, naked captivity, and rape threats; restriction of food, water, and use of toilet; and spraying the detainee's body with pressurized water. In fact, UN Special Rapporteur Manfred Nowak, after completing a fact-finding mission in Georgia, Mongolia, Nepal, and China, concluded that Nepal was the only country of the four that systematically conducted torture.⁵ Shockingly, a Nepali official admitted to Nowak that "a little bit of torture helps."⁶ In addition, Nepal received the highest

number of torture allegations at the Committee Against Torture committee in 2004, 2005, and 2006. Advocacy Forum documents detention conditions in 20 police detention centres

throughout Nepal but does not have any access to military detention centres. Despite these limitations, Advocacy Forum documented 2,271 cases of torture during the period of July 2001 to April 2006.

Of the 371 military detainees to whom Advocacy Forum had access before the People's Movement, 100% claimed that they were tortured. In addition, Advocacy Forum has documented 554 cases of enforced disappearance, 304 cases of illegal detention, and 25 cases of rape committed by the RNA from July 2001 to April 2006. In Advocacy Forum surveys of police

Om Prakash Timilsina

Om Prakash was suddenly arrested on 11 January 2004 by a dozen plainclothes RNA soldiers and was taken to an unknown army barrack. On the first day of his detainment, Om Prakash recalls: "The major would lay me down on the floor and wrap raw wires around both of my wrists. He then electrocuted me three times in an interval of three minutes. He would beat me with a wooden stick. After that, the major would sit on my back and have tea." In addition, the soldiers deprived Om Prakash of food and water and threatened to kill him on several occasions. Om Prakash remained in detention for five months and was tortured even in the days leading to his release.

Devi Rijal

When 26-year-old Devi refused to answer questions from the Superintendent of Police (SP) at the Inaruwa District Police Office (DPO), the SP shouted, "This whore can even speak!" The SP grabbed Devi by the arms and threw her down the stairs, where she fell unconscious. Several days later, policemen came into her room and started indiscriminately beating her with wooden sticks. Although she was later released, the police rearrested her and took her to Sunsari DPO; there, policemen interrogated her about the Maoists while beating her with wooden sticks. A few days later, she was transferred to an unknown police camp. She describes: "For the first two days, they beat me with sticks on my legs and back for about four to five hours while asking me several questions. They also laid me on the floor, and kicked me on my chest and back. They persistently asked me to tell them about the Maoists. When I refused, they beat me more and more. On the second day, they threatened me by saying, 'Now, we will take off your clothes and rape you. If you feel uneasy, we will do it.'"

⁵ UN News Centre, "Torture 'conducted on systematic basis' in Nepal": UN Rapporteur." 2 May 2006, <http://www.un.org/apps/news/story.asp?NewsID=18325&Cr=Nepal&Cr1> (last visited 13 June 2007)

⁶ Ibid.

detentions centres in Nepal from 2001 to 2006,⁷ 34.8% of 8,795 detainees admitted to being subjected to acts of torture and 23.6% of detainees stated that they were compelled by force to give a statement against their will. Only 25.2% of detainees were provided with a proper detention letter. Judges rarely asked detainees if they were tortured in custody, and only 15.4% of detainees interviewed by Advocacy Forum attorneys were permitted to read the statement that they provided to the police. 40.9% of detainees were denied their right to a medical check-up. Of the 982 juveniles interviewed by Advocacy Forum from 2001 to April 2006, 45.8% admitted to being tortured and 66.8% were illegally detained.

The Maoists

Despite making public commitments to respect international human rights norms during the conflict, the Maoists have perpetrated serious human rights abuses during the conflict against those they believed were enemies of their cause. From 2001 to the People's Movement of April 2006, Advocacy Forum has documented 320 cases of abductions, 64 cases of torture, and 4 cases of rape committed by the Maoists. Throughout the conflict, the Maoists have been known to recruit child soldiers into their ranks, even in the weeks leading to the CPA.

Jagadish Yadav

In an attempt to retaliate against villagers who had turned in five Maoist cadres to the security forces, a group of Maoists abducted Jagadish Yadav and several other individuals. One of the Maoists cadres pounced on Jagadish's face with his booted foot. While keeping Jagadish's hands tied behind his back, the cadres placed Jagadish's leg on top of a log. Two female cadres held onto Jagadish's leg, while another male cadre held onto his head. Another cadre that started beating Jagadish's right leg with an axe. Soon after this, Jagadish lost his consciousness.

After two days, Jagadish regained his consciousness. His thighbones in both legs were broken. Pieces of his flesh had been ripped out. Later on, health workers told Jagadish that he suffered acid injuries in his mouth. Apparently, the Maoists had poured acid into his mouth thinking that he was already dead.

THE ATROCITIES CONTINUE AFTER THE PEOPLE'S MOVEMENT

The abdication of absolute rule and the end of armed hostilities between the Government and the Maoists has not ushered in a new era of human rights recognition and protection in Nepal. Instead, the violations and abuses continue – Advocacy Forum alone has documented 1,313 new cases of torture. Though legislation now prohibits the NA's involvement in the arrest and detention of civilians, Advocacy Forum has recorded 17 acts of torture, 4 acts of rape, and 6 acts of illegal detention committed by the NA. Advocacy Forum's documentation of police detention centres has shown that the People's Movement has not brought about any significant amelioration in detention practices. Of the 3,908 detainees interviewed since April 2006, 27.6% were subjected to acts of torture. Only 4.6% received a notice of arrest and only 12.6% were permitted to read the statement they provided to the police. Furthermore, 5.3% of interviewed detainees stated that they were compelled by force to provide a statement. Of 1,105 juveniles interviewed since the People's Movement, 36.9% admitted to being tortured and 42.7% were detained illegally. As for the Maoists, Advocacy Forum has documented 67 cases of torture, 1 case of rape, and 96 cases of abductions since the People's Movement of April 2006. Common methods of torture include electrocution; sexual abuse

⁷ Advocacy Forum visits detention centres daily in Morang, Udayapur, Dhanusha, Kathmandu, Patan, Baglung, Rupendehi, Kapilvastu, Banke, Surkhet, Bardiya and Kanchapur Districts.

and rape threats; restriction of food, water, and use of toilet; excessive beating by iron rods and bamboo sticks, especially on the soles of the feet and back; and death threats and threats of indefinite detention.

In one recent incident on 19 June 2006, **Saroj Kumar Chaudhary**, a 15-year-old student, was detained by a bus driver after other local children pelted stones at the bus. Even though Saroj was an innocent bystander to the stone-throwing incident, the bus driver transferred Saroj to Ranashingdal Gulm Rupani Joint Security Base Camp. In the camp, four plainclothes security officers started punching Saroj on his chest. Then, they forced him to lie on the ground so that they could beat him with plastic pipes. Saroj describes: “They beat me with pipes for about two hours on different parts of my body, especially on the soles of my feet. They used filthy words and harassed me. They even threatened to shoot me dead.”

In another recent incident on 3 June 2006, Chitwan National Park officials, from the unit that investigates alleged cases of stealing and killing of animals, detained **Sikha Ram Chaudhary** on a charge of stealing rhinoceros horns. For several days, Sikha Ram was beaten excessively. One detainee familiar with Sikha Ram’s case notes that Sikha Ram was “not even able to urinate easily. We had to help him urinate.” For one week, Sikha Ram was tortured daily; officials burned cigarettes on his body and beat him with wooden sticks. After one session of excessive beating, Sikha Ram fell unconscious; the CNP officials subsequently transferred him to the hospital. He was soon pronounced dead. According to the Chitwan District Hospital autopsy report, CNP officials broke seven of Sikha Ram’s left ribs, creating a respiratory condition that led to his death.

Despite being the only legitimate institution that can arrest and detain individuals, the police continue to extort bribes and illegally detain and torture detainees. In one case in June 2006, Police Inspector Bishow Ram Khadka of the Ward Police Station in Maharajgunj repeatedly attempted to extort bribes from a restaurant owner, **Subarna Rai** (name changed). One day, the police detained and tortured Subarna after he refused to pay Khadka. He describes: “The police beat me indiscriminately with metal pipes all over my body, especially on my arms and stomach, for four hours continuously. Some 7-8 inch-long bruises could be noticed on both of my arms.” Subarna was released later that day, and subsequently filed a claim under the Torture Compensation Act. Soon after, Khadka made an offer to settle the case outside of court. Ultimately, Subarna decided to accept the compromise. He stated “I felt better compromising with the Inspector rather than remaining in a state of enmity with the state police. I did not want to live my life in fear of the police, so I compromised with them.”

Many victims are threatened with future bodily harm if they seek justice. **Puradi Prasad Pandey**, a resident of Kalikot District, was arrested and tortured on three separate occasions by officials of DPO Kalikot. Accusing Puradi of committing a murder, they policemen excessively beat him all over his body with sticks during his first detention episode on 16 December. Though they released Puradi the next day, the police again apprehended Puradi on 22 December 2006. The Superintendent of Police (SI) forced Puradi to lie down on the floor while he beat Puradi on his feet with a plastic pipe. The SI wanted Puradi to accuse another individual of being the murderer. Puradi initially refused, only to be struck over 90 times with a plastic pipe for not obeying the SI. Puradi, compelled by these rounds of torture, finally provided the false statement that the SI sought after being tortured for several more days. Puradi was then released, but was forced to report to the DPO everyday for the following week. After being released, Puradi disclosed the nature of his detention to his fellow

villagers, including the facts of his torture and his forced confession. The police, however, became aware of Puradi's activities, and arrested and detained him for the third time on 21 January 2007. He describes: "The police personnel, under the command of the SI, beat me on my back about 80 times with a bamboo stick, accusing me of contradicting my previous statement to the DPO." For the rest of the day, the police beat Puradi with a long bamboo stick all over his body. With Advocacy Forum assistance, Puradi filed a claim under the Torture Compensation Act in Kalikot District Court. The District Court issued summons to the defendants, after which Puradi received death threats from the Assistant Sub-Police Inspector (ASI) and SI. Meanwhile, four Maoists approached Puradi and told him to withdraw his case, or else lose his life. Puradi laments: "I went to the District Court on 28 February 2007 and withdrew the case. I am afraid of the perpetrators. I want to live, and I still feel the painful experiences of torture. One of my toes is damaged and no longer moves. I experience chronic body pain, especially in my back and ears. I have scars all over my legs. I do not think I can challenge the police and go through the same experience again."

As for the Maoists, their cadres' disrespect for human rights norms continued after the People's Movement and the CPA. In January 2007, **Bhoj Raj Joshi** was severely beaten by four Maoist cadres in Surkhet District. Prior to the incident, Bhoj was having a political discussion with a Maoist cadre. After the discussion, the Maoist cadre reported the incident to his fellow cadres, stating that Bhoj had threatened him. While he was walking down the street, four Maoist cadres encircled Bhoj and began beating him excessively. Bhoj describes: "They randomly kicked and punched me on my chest, head, legs, and other parts of my body for several minutes and then shoved me in to a nearby canal. Then, they beat on my head, chest and other parts of my body with an iron rod for around 10 minutes until I lost my consciousness." After Bhoj regained his consciousness, the Maoist cadres fled the scene. No one helped Bhoj because the cadres threatened to kill anyone who assisted him. Both of Bhoj's legs were broken, and he continues to suffer pain in his head due to the torture inflicted upon him.

The Maoists have recently inflicted serious torture on a 50-year-old woman, Saraswoti Giri. A hotel manager, Saraswoti had been feeding Maoist cadres lunch and dinner even though they refused to pay her. Prior to the incident, Saraswoti asked one of the cadres to pay her for his food. The cadre promised to retaliate. On 10 January 2007, the Maoist cadres abducted three women from Saraswoti's hotel and took them to the local party headquarters. As demanded by the Maoists, Saraswoti went to the party headquarters that evening. There, the Maoist cadres took her inside a room and then beat her with sticks all over her body. They accused her of being involved in prostitution. Two Maoist cadres then kicked her and screamed at her with filthy words. One of the Maoists even threatened her to kill her with a knife. They beat and interrogated Saraswoti continuously for approximately three hours. After enduring this torture, Saraswoti confessed to being involved in prostitution.

THE FAILURE OF THE NEPALI LEGAL SYSTEM TO RESPOND TO THE TORTURE PROBLEM

Nepal is bound by several international treaties prohibiting the practice of torture, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Right of the Child (CRC), and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). Despite these international legal obligations and the principle implementation efforts discussed here, the practice of torture is common in

criminal investigations and army and police detentions. The Maoists, despite pledging their respect to international human rights standards, have similarly tortured civilians in their captivity. Furthermore, victims often have little access to justice, and perpetrators are often protected by a blanket of impunity. Therefore, Nepal must address the infirmities in its existing legislation and vigorously implement laws that protect Nepalis from torture.

I. Insufficiency of Current Domestic Legislation

Much of Nepali legislation regulating the practice of torture falls short of meeting Nepal's international legal obligations. Because the majority of the relevant legislation is not aggressive enough to prevent and prohibit torture, a culture of impunity has developed, where perpetrators believe that they can torture a detainee without facing any criminal penalties.

The main pieces of legislation regulating the prohibition against torture in Nepal are the Interim Constitution and the Torture Compensation Act. The Interim Constitution, promulgated in 2007, criminalises torture for the first time in Nepal. However, it only criminalises torture that occurs during official detention, whereas Articles 1 and 4 of the Convention Against Torture jointly obligates Nepal to criminalise acts of torture that are committed or instigated by an official within Nepal's territorial jurisdiction.

Furthermore, the definition of torture put forth by the Torture Compensation Act is too narrow to meet international standards; moreover, the Act fails to even criminalise torture. The Act does not obligate the government to take institutional action against a perpetrator of torture. Instead, perpetrators may be subject to grossly inadequate "departmental action," such as demotions, suspensions, and delayed promotions.

Other pieces of legislation in Nepal also fail to properly implement Nepal's obligation to prevent and criminalize torture. The Evidence Act, for example, lacks provisions on witness protection. In listing the duties of the police, the Nepal Police Act does not explicitly state that police personnel must refrain from torture and other forms of cruel, inhuman, and degrading treatment. The Police Act and the Armed Force Police Act, in their lengthy sections delineating crimes that a member of the police or armed police may commit and their associated penalties, do not criminalize the practice of torture. The Nepal Army Act provides immunity from prosecution for army personnel conducting any action taken while discharging duties in good faith. While the Act provides that torture may not be committed in good faith, there is no transparency as to the investigations or prosecutions to be taken. The Local Administration Act permits the Chief District Officer to empower security agencies to use "whatever means necessary" in order to maintain peace and security. This language permits indiscriminate assaults, including torture, against civilians. The Prison Act has conditional regulations on detention standards, such that the standards need only be implemented "if possible." The result of this law is that detention standards have, in many instances fallen below international standards. The Children Act has a loophole in its language, allowing teachers or parents to use force against the child "for the interest of the child himself." In practice, this loophole has permitted teachers to use indiscriminate force against their students. Lastly, there is no legislation that criminalizes acts of torture by non-state actors. In total, these laws, or lack thereof, do not sufficiently implement the international legal obligation to prohibit and criminalize the practice of torture. As a result, Nepal is in violation of its Article 2(1) obligation under the Convention Against Torture,

which requires that Nepal “take effective legislative, administrative, judicial, or other measures to prevent acts of torture....”

The Government of Nepal must take three steps to rectify its legal position with respect to the insufficiency of existing laws regulating the practice of torture. First, Nepal must enact a law that gives full breath to the international definition of and prohibition against torture by criminalizing any act of torture “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁸ Second, given the political realities of the conflict in Nepal, the Government should also criminalize acts of torture committed by non-state actors. Third, the Government of Nepal must aggressively enact and implement legislation that prohibits and criminalizes acts of torture committed by members of state security agencies. Such implementing legislation will help break the culture of impunity that exists amongst these actors in Nepal.

II. Lack of Implementation of Laws Regulating Torture

Laws and institutions that regulate torture in Nepal have not been wholeheartedly implemented to deter perpetrators from committing torture. Even the laws discussed in the previous section, in addition to their facial inadequacy, are not implemented. In fact, the Special Rapporteur on Torture, after completing his mission to Nepal, concluded that “basic requirements are not respected by the police, armed police, or the RNA, such as timely access to a lawyer, bringing suspects before a judge within 24 hours of arrest, or medical examinations upon arrest or transfer.”⁹

For example, the relevant provisions of the National Code state that it is an indictable offence for an official to detain someone without providing the captive any food or drinking water. However, Advocacy Forum data shows that detainees are often denied basic provisions while in custody. In addition, the State Cases Act of 2054 institutes a check on police investigations by requiring a government attorney to be present at the recording of statements. This protection is often denied to detainees, who in many instances are forced to confess to crimes they did not commit in order to stop the torture being inflicted upon them. Finally, the Civil Rights Act of 2012 pretends to provide all Nepalis with equal protection of the laws and the right to freedom and individual dignity. Yet, the Act does not have any true meaning in terms of implementation.

Therefore, it is incumbent upon the Government to reinvigorate the existing protections against torture. In addition to enacting and implementing legislation that meets international standards, the Government should take advantage of the transition period to popularize these existing laws and clear the obstacles that are preventing effective implementation of laws prohibiting torture.

III. Lack of Independent Monitoring of Detention Centres and Independent Enquiry into Human Rights Violations and Abuses

⁸ Convention Against Torture and Other Cruel, Inhuman, or Degrading Punishment, Art. 1(1), *entered into force* 26 June 1987.

⁹ U.N. Economic and Social Council [ECOSOC], Commission on Human Rights, *Civil and Political Rights, Including: The Questions of Torture and Detention: Report by the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, ¶20, U.N. Doc. E/CN.4/2006/6/Add.5 (9 January 2006) (*prepared by Manfred Nowak*).

The culture of impunity that reigns in Nepal is further strengthened by the lack of effective institutions to monitor and take action against human rights violations and abuses. As a result, perpetrators rarely face any pressure to accept accountability for their actions and thus continue to violate international human rights norms.

The National Human Rights Commission (NHRC) enjoys constitutional status under the Interim Constitution. The commission is authorized to request governmental action, including the provision of compensation, in cases of human rights violations. However, in many instances the Government has denied the Commission access to intervene. In addition, perpetrators have consistently threatened victims of torture from taking legal action against them, and the criminal justice system has failed to adequately prosecute perpetrators of human rights violations. Therefore, the Government of Nepal must take advantage of the transitional period and strengthen the capacity of the NHRC to investigate human rights violations and compel governmental action against perpetrators. In particular, the Government must ensure the functional independence of the NHRC and appoint NHRC officials according to the Paris Principles.¹⁰

In addition, the Government of Nepal should sign and ratify the Optional Protocol of the Convention Against Torture (OPCAT), which would provide further channels for independent monitors to investigate the practice of torture in Nepal, as well as create incentives for government security agencies and non-state actors to eliminate torture from their toolboxes. The OPCAT would open Nepali detention centres to international inspections and subject the Government of Nepal to international pressure if Nepal fails to meet its international commitments. Ratifying the OPCAT would also send a clear message to the people of Nepal that the government is serious about representing them and respecting their inalienable human dignity.

Bablu Rai

After being arrested on a drug smuggling charge, Bablu Rai was severely tortured by policemen from Jamunaha Police Post in Nepalgunj. He describes: "The policemen forced me to lie down on the floor and beat me with a stick and plastic pipe for about two hours. They beat me on the soles of feet, back, and some other parts of body." While being detained, authorities prevented AF lawyers from speaking with Bablu. After finally meeting with him, AF lawyers filed a complaint on his behalf. However, on 29 May, an inspector from the District Police Office (DPO) in Banke District denied AF lawyers' access to detainees. In a meeting with AF, the Deputy Superintendent of Police charged AF with creating "unnecessary burdens" for the DPO. He further accused Advocacy Forum of fabricating Bablu Rai's claim and promised that he would continue to work on his own terms. AF has yet to regain its access to detainees in Banke District.

IV. Lack of Compensation for Victims

Since its inception, the Advocacy Forum has documented thousands of torture cases committed by the security forces, the police and the Maoists. Due to the insufficiency of the compensation scheme in Nepal, the vast majority of these torture victims do not receive any form of compensation.

There are seven major legal problems undermining the ability of Nepali courts to provide victims of torture with adequate compensation, including rehabilitation. First, Nepal does not offer

¹⁰ See National Institutions for the Promotion and Protection of Human Rights, United Nations General Assembly Res. 48/134, U.N. Doc. A/RES/48/134 (20 December 1993).

any sort of protection to victims and witnesses who are threatened with future bodily harm by perpetrators. Second, geographical barriers to consulting with lawyers and filing claims, in addition to many victims' lack of knowledge of legal remedies, make civil action against perpetrators difficult. Third, the Torture Compensation Act's requirement to file a claim within 35 days of the alleged act of torture or release from detention denies victims an adequate opportunity to seek legal redress for the wrongs committed against them. Fourth, the Interim Constitution and the Torture Compensation Act lack any mention of providing for a victim's rehabilitation needs. Fifth, the Torture Compensation Act places a ceiling on the amount of compensation at a paltry sum of Rs. 100,000, approximately \$1,610. Sixth, the legal aid regime in Nepal, implemented under the Legal Aid Act, does not attend to the needs of victims of human rights violations. In addition to all of these deficiencies, the Torture Compensation Act deters potential claimants from seeking relief by imposing fines on those parties found by a court to be making groundless claims.

The availability of an adequate compensation scheme not only provides some relief to torture victims, but also serves as a deterrent against the crime of torture. Nepal, therefore must overhaul its laws concerning compensation of torture victims and legal aid in order to meet its international obligations. The period in which a victim can file a claim for compensation under the Torture Compensation Act should be extended to at least sixty days. The monetary amount that a victim of torture may collect should also be increased to better provide victims with relief, and the government should provide legal aid services to victims of human rights violations. These reforms will help ensure that Nepal's legal system can offer victims "fair and adequate" compensation.

A COMPREHENSIVE TRANSITIONAL JUSTICE MECHANISM: A TOOL FOR ADDRESSING THE NEEDS OF TORTURE VICTIMS

The United Nations Human Rights Commission defines impunity as the "the impossibility, *de jure* or *de facto*, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any enquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims."¹¹ Unquestionably, one of the primary challenges that Nepal currently faces is tackling the culture of impunity. Torture victims face an uphill battle in pursuing civil claims under the Torture Compensation Act because of the restrictive statute of limitations and the narrow definition of torture within the Act. Moreover, perpetrators often threaten victims and their lawyers for filing such claims. Although the Interim Constitution gives the State the responsibility to convene a Truth and Reconciliation Commission (TRC) to investigate past abuses, the Government has pursued a discrete process of implementation by maintaining a deaf ear to the concerns of civil society and victims. The victims of gross human rights violations, including extrajudicial killings, enforced disappearances, torture, and enforced displacements, are still waiting for justice, with the hope that perpetrators will be held accountable in the "New Nepal."

Examples of positive institutional responses to human rights violations since the People's Movement are rare. However, in a landmark verdict on 1 June 2007, the Supreme Court ordered the Government to form a commission to probe the whereabouts of disappeared persons and to formulate an anti-disappearance law that met the standard established in the

¹¹ United Nations Economic and Social Council [UNECOSOC], Commission on Human Rights, *Promotion and Protection of Human Rights – Impunity: Report of the independent expert to update the Set of Principles to combat impunity*, §A, U.N. Doc. E/CN.3/2005/102/Add.1 (8 February 2005) (prepared by Diane Orentlicher).

International Convention for the Protection of All Persons from Disappearance. The Supreme Court also directly confronted the Government's inertia in addressing impunity by stating: "Though ending impunity should have been the first priority of conflict resolution, it has not been given due attention." The Court has also ordered the government and the Home Ministry to initiate murder charges against army and police officials and bureaucrats involved in the death of Chakra Katuwal, a schoolteacher from Okhaldhunga District who was disappeared in December 2000.

As there can be no concrete political stability and democracy without addressing past abuses, a comprehensive program for transitional justice, including a Truth and Reconciliation Commission and prosecutions, is needed to lay the foundations for a sustainable peace. Aggressively and fairly unpacking the truths of human rights violations and abuses during the conflict and years of oppression will give Nepalis a better, unified understanding of the structural, political, social, and economic reasons that permitted these atrocities to occur. In turn, this will allow current policymakers to address the roots of the conflict in order to prevent a further outbreak of violence. In addition, the pursuit of transitional justice will provide a forum for survivors of atrocities to present their stories and receive reparations for their pain. Moreover, holding perpetrators accountable for their actions can help break the cycle of impunity and lay the foundations for the rule of law and indeed, *Naya Nepal*.

CONCLUSION

Nepal currently stands at the crossroads between a future that honors and enforces human rights and the rule of law and a future that merely perpetuates past inaction and abuse. One year since the so-called reemergence of democracy in Nepal, it appears that the political leadership has merely allowed the human rights practices of the pre-*Jana Andolan* era to perpetuate indefinitely into the future.

The desires for democracy articulated in the People's Movement and the demands from Nepalis to live in a country characterized by the rule of law must not be lost in the noise of political bickering. In these pages, Advocacy Forum documents some of the rampant human rights violations and abuses that have continued to plague Nepal and suggests reforms needed to prevent these atrocities from occurring again. The gripping personal anecdotes from survivors of torture further highlight the urgency for addressing the human rights deficit in Nepal. Our hope is that this discussion reinvigorates the human rights dialogue in the transition so that *Naya Nepal* can become a reality.

ANNEX I

ADVOCACY FORUM'S EXPERIENCES

COMPENSATION OF TORTURE VICTIMS

To date, Advocacy Forum has filed fifty cases under the Torture Compensation Act on the behalf of victims of torture. Of those cases that are not pending, nine were squashed, many on the grounds of insufficiency of the victim's medical report. In one landmark case, the Court awarded Karbir Singh Sahu Nrs. 1,000,000.00 (\$15,8000) in compensation on 3 August 2006 and directed the government to take action against the perpetrators. In another landmark case, the Court granted compensation to Karna Bahadur Thapa, a lawyer who was tortured by the policeman outside a governmental facility after participating in a peaceful demonstration. The decision, handed down on 2 April 2007, widened the limited jurisdiction for torture under the Torture Compensation Act by providing Thapa with compensation even though he was not detained in a governmental facility. However, in the remaining five cases, the average amount of compensation received by the victim was a paltry Nrs. 11,000.00 (\$870). Further, a victim who was awarded compensation in 2003 has yet to receive anything from the perpetrator.

ADVOCACY FORUM'S DOCUMENTATION OF CONDITIONS IN POLICE DETENTION CENTRES

Based on the idea that regular and unannounced visits to all places of detention are one of the most effective ways to prevent torture, Advocacy Forum visits detention centres daily in the districts in which Advocacy Forum operates. However, given that Advocacy Forum lawyers face serious limitations in accessing victims, AF data can only provide a glimpse into the full extent of human rights violations that occur in Nepal.

During these visits, Advocacy Forum documents, questions, and challenges the routine practices of torture, illegal detention, and lack of access to legal and medical aid. Advocacy Forum's detention centre monitoring also helps the police uphold their constitutional obligations. Each detainee visited by Advocacy Forum lawyers is given a standard questionnaire. The questionnaire has received input from major stakeholders, including the police, judges, public prosecutors, and defence attorneys. The questionnaire contains questions on the conduct of the arrest, whether the detainee was tortured, and the detainee's knowledge of legal rights and remedies. If a detainee reveals that he has been denied any of his rights, Advocacy Forum lawyers first try to negotiate a solution with the police. If the police authorities do not rectify the situation, Advocacy Forum attorneys take legal action on the detainee's behalf. Furthermore, if the situation of a detainee becomes particularly egregious, Advocacy Forum notifies the UN Special Rapporteur on Torture, the UN Working Group on Arbitrary Arrest and Detention, and non-governmental organizations such as Amnesty International, Human Rights Watch, and the Asian Human Rights Commission.

SUMMARY OF DATA FROM ALL ADVOCACY FORUM DISTRICT OFFICES

Advocacy Forum asks detainees whether the police tortured them during their detention. By district, the percentage of detainees who were inflicted by torture:

District	Percentage
All ¹²	33.2
Banke ¹³	24.7
Morang ¹⁴	37.7
Kaski ¹⁵	33.5
Kanchanpur ¹⁶	21.1
Udayapur ¹⁷	12.7
Surkhet ¹⁸	19.8
Kapilvastu ¹⁹	19.6
Rupendehi ²⁰	10.8
Patan ²¹	42.6
Dhanusha ²²	18.5
Baglung ²³	30.5
Kathmandu ²⁴	44.1
Bardiya ²⁵	33.3

¹² Data from 2001 to April 2007; 10,023 detainees interviewed; 6.0% female; 94.0% male

¹³ Data from 2001 to April 2007; 1,113 detainees interviewed; 4.9% female; 95.1% male

¹⁴ Data from 2001 to April 2007; 1,137 detainees interviewed; 2.9% female; 97.1% male

¹⁵ Data from 2004 to April 2007; 773 detainees interviewed; 6.2% female; 93.8% male

¹⁶ Data from March 2005 to April 2007; 246 detainees interviewed; 6.9% female; 93.1% male

¹⁷ Data from June 2005 to April 2007; 189 detainees interviewed; 2.6% female; 97.4% male

¹⁸ Data from November 2005 to April 2007; 121 detainees interviewed; 1.7% female; 98.3% male

¹⁹ Data from November 2005 to April 2007; 92 detainees interviewed; 4.3% female; 95.7% male

²⁰ Data from July 2006 to April 2007; 204 detainees interviewed; 2.5% female; 97.5% male

²¹ Data from June 2005 to April 2007; 474 detainees interviewed; 2.7% female; 97.3% male

²² Data from July 2006 to April 2007; 124 detainees interviewed; 2.4% female; 97.6% male

²³ Data from July 2006 to April 2007; 82 detainees interviewed; 3.7% female; 96.3% male

²⁴ Data from 2001 to April 2007; 3,324 detainees interviewed; 10.5% female; 89.5% male

²⁵ Data from January 2007 to April 2007; 24 detainees interviewed; 100% male

The Torture Compensation Act requires that the police provide detainees with medical check-ups. By District, the percentage of detainees who were provided with medical check-ups:

District	Percentage
All	44.4
Banke	61.8
Morang	37.7
Kaski	49.2
Kanchanpur	82.5
Udayapur	41.3
Surkhet	81.8
Kapilvastu	80.4
Rupendehi	81.9
Patan	59.1
Dhanusha	75.8
Baglung	85.4
Kathmandu	40.1
Bardiya	70.8

In Nepal, victims must be produced in court within 24 hours of their arrest. By district, the percentage of detainees who were produced in court within 24 hours:

District	Percentage
All	28.8
Banke	43.2
Morang	28.9
Kaski	26.5
Kanchanpur	35.8
Udayapur	34.4
Surkhet	51.2
Kapilvastu	47.8
Rupendehi	37.7
Patan	42.0
Dhanusha	33.1
Baglung	30.5
Kathmandu	27.2
Bardiya	58.3

The legal system perpetuates the culture of impunity by failing to safeguard fundamental human rights. By district, the percentage of detainees who were asked by a judge if they were tortured:

District	Percentage
All	10.0
Banke	10.3
Morang	19.3
Kaski	3.5
Kanchanpur	4.5
Udayapur	3.2
Surkhet	18.2
Kapilvastu	4.3
Rupendehi	34.8
Patan	7.8
Dhanusha	6.5
Baglung	8.5
Kathmandu	14.3
Bardiya	33.3

The police use torture and other degrading treatment to extract evidence. By district, the percentage of detainees whose statements were compelled by force:

District	Percentage
All	21.0
Banke	19.1
Morang	46.2
Kaski	4.9
Kanchanpur	9.3
Udayapur	6.3
Surkhet	0.8
Kapilvastu	5.4
Rupendehi	0.5
Patan	5.7
Dhanusha	0.8
Baglung	0.0
Kathmandu	31.7
Bardiya	0.0

ANNEX II

Torture & Illegal Detention May 06 - April 07

