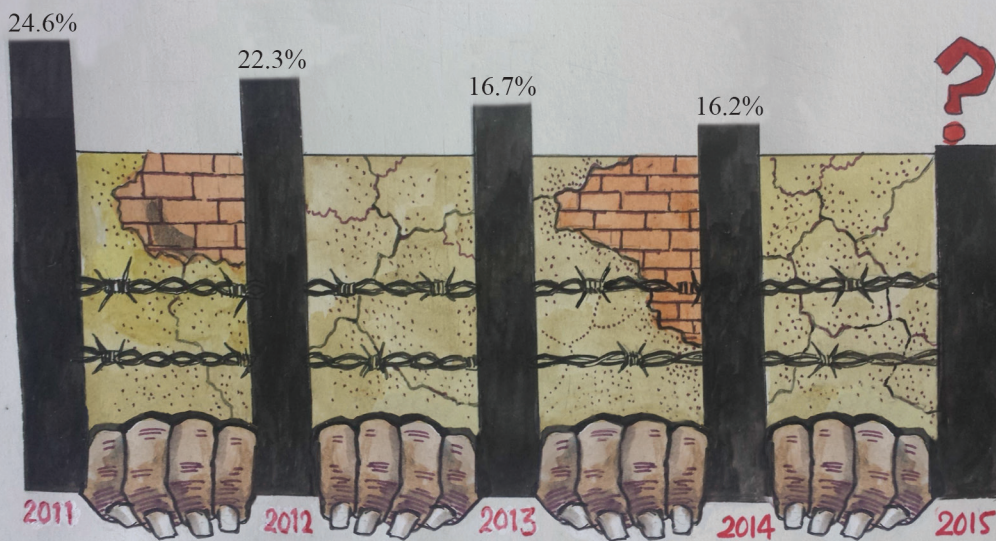


# Torture in Nepal in 2014

*More of the Same*



June 26, 2015



Advocacy Forum - Nepal

Supported by



EUROPEAN UNION

# **Torture in Nepal in 2014**

*More of the Same*



# Torture in Nepal in 2014

*More of the Same*

June 26, 2015



Advocacy Forum - Nepal

# Torture in Nepal in 2014: More of the Same

First Edition 2014  
Copyright (c) Advocacy Forum

Publisher  
Advocacy Forum-Nepal  
Nayabasti Marga, Baluwatar-4  
Kathmandu, Nepal  
P.O.Box: 21798  
Tel: # 01- 4412349/4425561 Fax: # 01- 4432309  
E-mail: [info@advocacyforum.org.np](mailto:info@advocacyforum.org.np)  
[www.advocacyforum.org](http://www.advocacyforum.org)

Cover Illustration: Sushil Thapa  
Layout & Cover design: Kishor Pradhan  
Printed in Nepal

# CONTENTS

---

Foreword	vii
Executive summary	1
1. Introduction	3
2. Methodology	5
3. Torture trends and patterns in Nepal's detention centres	7
A. Overall torture trends and patterns in Nepal's detention centres	7
Methods of torture	9
B. Torture rates by district	9
Case study: Banke	12
Case study: Kathmandu	13
C. Torture rates by charge	14
D. Torture rates by caste/ethnicity	17
4. Torture trends in vulnerable groups	21
A. Gender	21
Case study: Sita	21
B. Juveniles	23
Case study: Rajendra and Anjay	24
5. The Torture Bill	27
A. International obligations in relation to torture	27
B. Positive aspects of the Bill	29
C. Priorities for amendment	30
(i) Time limit for filing complaint (Sec. 13) and filing charges (Sec. 31) must be extended	31
(ii) Punishment provisions must be strengthened (Sec. 22)	33
(iii) Cap on compensation must be removed (Sec. 23)	34
(iv) Provision on filing a false complaint must be removed (Sec. 34)	35

(v) Protection for acting in “good faith” must be removed (Sec. 35)	35
D. Suggested additional provisions to address barriers to justice	36
6. Police compliance with procedural safeguards	39
A. Reasons for arrest	39
B. Judicial authority within 24 hours	41
C. Right against self-incrimination	44
D. Health check-ups	45
7. Conclusions	47
 Annex – Data (2014)	 49
Torture and CIDT information	

# FOREWORD

---

Advocacy Forum Nepal (AF), a non-governmental organization working for the protection and promotion of human rights since its establishment in 2001, has been publishing a torture report every year on 26 June to mark the International Day in Support of Victims of Torture. This report documents the ongoing practice of torture and ill-treatment in Nepal during 2014.

It's encouraging to see that the rate of reported torture is gradually decreasing in the years following the conflict in Nepal. However, the fact that 16.2% of detainees report being tortured and ill-treated in police detention centres is a serious concern. It shows the need for reform in the policing system of Nepal, policy changes to meet the international standards on the prevention of torture, more training and sensitization activities for the stakeholders of the criminal justice system and constructive engagement of national and international human rights organizations to stop practices of torture. Above all, to address this problem, I hope, this report will further accelerate the process of enacting legislation criminalizing torture which is now pending before Parliament.

I would like to extend our sincere thanks to Louise McNeil, Om Prakash Sen Thakuri and Sarah Fulton from REDRESS Trust who have written the report. This report would not have been possible without their dedication and hard work. I would also like to extend my gratitude to Ingrid Massage who, as always, has edited the report and provided valuable insights.

I would like to thank AF staffs who have continued to implement the organization's integrated strategy to reduce the risk of torture by regularly visiting government detention centres. I would like to acknowledge the support of those police detention centres that have guaranteed their detainees'



access to lawyers and have allowed AF lawyers to provide free legal support to detainees. Similarly, I would also like to express my appreciation for the openness of the Human Rights Unit of the Nepal Police for engaging with AF in addressing the problem of torture in police detention centres.

Our highest appreciation goes to the detainees and torture survivors who have shared their experiences with us. We also express our sincere gratitude to all judges, public prosecutors, police officials and the National Human Rights Commission for their continuous support and assistance.

**Advocate Chudamani Acharya**

Chairperson

Advocacy Forum

**Dr. Trilochan Upreti**

Executive Director

Advocacy Forum

June 2015

## EXECUTIVE SUMMARY

---

An analysis of the trends and patterns in the prevalence of torture recorded by AF during 2014 suggests the same longstanding systemic problems continue to prevail. Chiefly among them is the consistently high rate of torture or other cruel, inhuman or degrading treatment of juveniles highlighted by AF over many years. Police in certain districts continue to torture substantially more frequently than in others: Banke, Kathmandu districts as well as Jhapa. In addition, Kathmandu has seen a significant increase in rates of reported torture and ill-treatment from 18.1% in 2013 to 26.7% in 2014. Similarly, the social groups considered to be “low caste” are reporting being tortured more frequently than “high caste” – a longstanding pattern. All this suggests that torture remains a systemic problem in Nepal despite a slow incremental decrease.

Of the 1,916 detainees interviewed during 2014, 16.2% (311) reported being subjected to torture or other ill-treatment in detention – a small decrease from 16.7% in 2013. Of particular concern is the fact that juveniles continue to report torture with alarming frequency – 24.1% of detainees aged 18-years-old and under claimed to have been tortured in detention, a figure significantly higher than the average of 14.4% among the adult detainees interviewed by AF. These figures have remained constant since 2013. Kathmandu, Banke and Baglung appear to torture juveniles at almost double the rate of adults. In Banke, for example, almost half of the juvenile detainees interviewed (51.3%) told AF they had experienced torture in detention.

This report also analyses the Torture or Cruel, Inhuman or Degrading Treatment (Offence and Punishment) Bill, tabled in Parliament in August 2014, which aims to criminalise torture, provide a mechanism for the investigation of torture complaints, and provide compensation to victims, in line with Nepal’s obligations under international human rights law in general

and CAT consultant in particular. While the tabling of this Bill is a positive development, it contains a number of provisions that may undermine its objectives. These include:

- The extremely short time limit (35 days) for filing a complaint (Sec. 13);
- The low penalties for somebody who has committed or ordered torture (five years' imprisonment and/or a fine of Rs 50,000) (Sec. 22);
- An arbitrary cap of Rs 500,000 (approximately USD\$5,000) on compensation, preventing victims from receiving adequate, effective and proportionate reparation (Sec. 23);
- A provision providing for the imposition of a fine for making a false complaint, which may discourage genuine victims of torture from making a complaint (Sec. 34); and
- Protection for officials acting in "good faith" (Sec. 35).
- Other findings from interviews conducted by AF in 2014 show that reported rates of torture vary significantly by charge, with those charged with theft reporting torture or ill-treatment much more frequently than those charged with other offences (38.8% and 16.6% respectively). This may be due to the pressure exerted on police to find a culprit and recover the stolen property in cases of theft, and their corresponding willingness to use torture to obtain a confession.

More than a quarter of detainees (26.4%) who signed a confession in 2014 claimed they did not do so of their own volition. This is particularly problematic given that judges only asked 18.4% of defendants whether torture had occurred during detention. In recent years, AF has observed an apparent shift towards the use of more psychological forms of torture, such as threats, which the Center for Victims of Torture describes as a method that 'can be more damaging and cause more severe and long-lasting damage than the pain of physical torture'.<sup>1</sup> Physical torture, including beating with sticks and pipes, unfortunately also continues.

<sup>1</sup> The Center for Victims of Torture, *Effects of Psychological Torture* (August 2011), available at [http://www.cvt.org/sites/cvt.org/files/u18/CVT\\_EffectsOfPsychologicalTorture\\_August2011.pdf](http://www.cvt.org/sites/cvt.org/files/u18/CVT_EffectsOfPsychologicalTorture_August2011.pdf). See also: Hernán Reyes, 'The worst scars are in the mind: psychological torture' (2007) 89(867) *International Review of the Red Cross* 591, available at <https://www.icrc.org/eng/assets/files/other/irrc-867-reyes.pdf>

# 1. INTRODUCTION

---

Advocacy Forum (AF) has been visiting police detention centres for 15 years, interviewing detainees, recording accounts of torture and other ill-treatment by state authorities and helping victims bring cases against perpetrators. The evidence gathered is used to raise awareness among stakeholders and the public, and is presented annually on 26 June to coincide with the International Day in Support of Victims of Torture.

This report draws on nearly 2,000 interviews gathered by AF from detainees in detention centres across Nepal<sup>2</sup> and identifies trends and patterns of torture during 2014. It examines rates of reported torture by district, caste, charge, age and gender to identify areas or characteristics that place detainees at particular risk of experiencing torture or other cruel, inhuman or degrading treatment while in detention. It also assesses the effectiveness of a number of procedural safeguards against torture contained in the Interim Constitution of Nepal and looks at the proportion of detainees provided with the reasons for their detention in the appropriate period of time, brought before a judicial authority within 24 hours, and compelled to testify against themselves through coerced confessions.

We include a comprehensive summary of the Torture or Cruel, Inhuman or Degrading Treatment (Offence and Punishment) Bill, which was submitted to Parliament in August 2014. This Bill proposes to criminalise torture, provide a mechanism for the investigation and prosecution of torture complaints, and provide compensation to victims. This is a positive development that would complement AF's work in torture prevention and would, if implemented, go a long way towards fulfilling Nepal's obligations under the UN Convention

<sup>2</sup> Detainees in 15 districts of Nepal were visited – see the Methodology section for further details.

against Torture and other international human rights treaties. However, a number of key provisions must be amended or added in order to ensure that the Bill is able to achieve its goals.

## 2. METHODOLOGY

---

In 2014, AF lawyers conducted interviews with 1,916 detainees<sup>3</sup> in government detention centres across 15 districts: Kathmandu, Morang, Banke, Kaski, Kanchanpur, Udhayapur, Rupandehi, Danusha, Baglung, Myagdi, Parbat, Ramechhap, Dolakha, Jhapa and Siraha. AF visits both District Police Offices and Area Police Offices in each of the above districts and selects names at random from the police list of detainees held at the police station at the time. If there are women or juveniles detained, they are treated as a priority. During these visits to detainees, the AF lawyer explains the role of AF and the rights of detainees as guaranteed under the Interim Constitution of Nepal (2007) and international law. The AF lawyer then conducts an interview with the selected detainee/s using a questionnaire designed with the support of national and international experts.<sup>4</sup> This questionnaire collects data on incidences of torture, as well as personal characteristics of the detainee such as age, caste and gender. Where possible, interviews are carried out in interview rooms without police officers present. However, in most cases interviews are conducted while standing at the gates of detention cells in the presence of police officers. This has almost certainly skewed the data to show fewer incidences of reported torture than would otherwise be reported, due to fear of police reprisals.

Through these visits to detention centres, AF aims to encourage police to implement their constitutional obligations (such as ensuring detainees have access to a lawyer), gather data in relation to trends and patterns of reported torture in Nepal over time, and provide victims with support and access to justice. AF also represents victims in court, conducts awareness training on

<sup>3</sup> This number is markedly smaller than previous years, due to a lack of funding to carry out this research.

<sup>4</sup> Adocracy Forum has developed a questionnaire.

human rights with police, judges and public prosecutors, provides legal, medical and psychosocial support to torture victims and communicates cases to national and international bodies.

For the purposes of this report, torture is defined as per article 1(1) in the Convention against Torture (CAT) and encompasses other cruel, inhuman or degrading treatment or punishment as defined in article 16 of CAT. Torture is thus

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>5</sup>

The data were processed with the Statistical Package for the Social Sciences (SPSS) and analysed for statistical significance using two main tests. The Hypothesis Test for Comparing Two Proportions was used for comparing frequencies between two groups to determine if there was a meaningful difference between them. Pearson's Chi-Squared Test was used to evaluate the likelihood that any observed difference between two sets of one categorical variable arose by chance. In both tests, p values of less than 0.05 were deemed to be statistically significant. For this report AF analysed data of 9 districts across the country.

<sup>5</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), art 1(1).

### 3. TORTURE TRENDS AND PATTERNS IN NEPAL'S DETENTION CENTRES

---

#### A. Overall torture trends and patterns in Nepal's detention centres

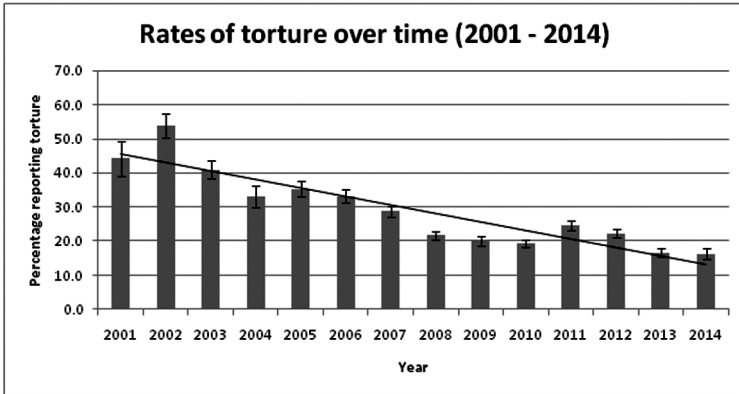
In 2014, Advocacy Forum lawyers interviewed 1,916 detainees in detention centres across 15 districts of Nepal. Of the detainees interviewed, 311 (16.2%) reported that they had been subjected to torture or other cruel, inhuman or degrading treatment while in police custody. This is the lowest rate of torture recorded since AF began interviewing detainees in 2001 and is a small decrease from 2013, when 16.7% of interviewees reported experiencing torture or other cruel, inhuman or degrading treatment. This is consistent with the steady incremental decline in the rate of torture seen in Nepal over the last eleven years. Since 2001, the reported frequency of torture has decreased at an average rate of 2.5% per year – a trend that can be seen in Figure 1.

Part of the decline has to be explained by the very high use of torture during the conflict, when up to 53.8% of detainees reported experiencing torture or inhuman treatment. Following a peak in 2002, reported levels of torture have been decreasing ever since. Over the post-conflict period alone, reported torture has been declining at an average rate of 1.2% per year. While this number is relatively small, it nonetheless represents a statistically significant<sup>6</sup> trend in the decreasing use of torture, and underlines the importance of AF's work on torture prevention. Figure 2 shows the downward trend in torture rates between 2007 and 2014. The increase in reports of torture in 2011 and 2012 was attributed to the adoption of a Special Security Plan intended to crack down on highway blockades and organised crime, as well as to strengthen the security situation in the eastern hills,

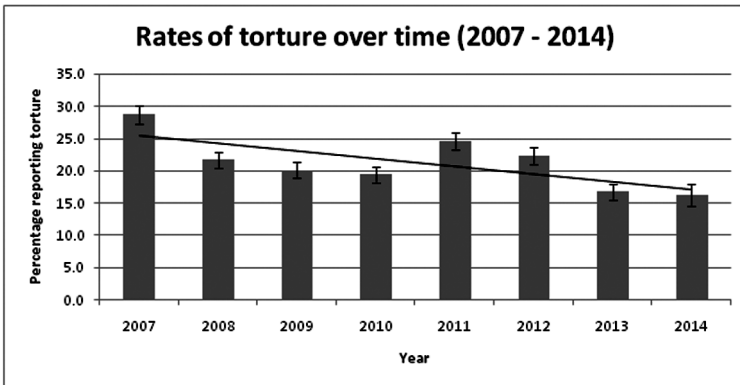
<sup>6</sup> p = 0.049



eastern Terai, Kathmandu valley and mid- and far-western Terai, resulting in increasing arrest and detention in those areas.<sup>7</sup>



**Figure 1: Rates of torture between 2001 and 2014. Error bars represent 95% confidence intervals.<sup>8</sup>**



**Figure 2: Rates of torture in the post-conflict period (2007 – 2014)**

<sup>7</sup> See AF, *Torture of Women: Nepal's Duplicity Continues*, June 2012, available at <http://advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>

<sup>8</sup> Ninety-five percent confidence intervals indicate that there is 95% certainty that the true value is within the range of the bars. This is based on the sample size and the proportion reporting torture.

### *Methods of torture*

According to detainees' allegations, a range of torture methods are used by police to punish, interrogate or extract confessions from the detainees. The most common methods of torture include beatings on the soles of the feet with sticks, pipes or other objects, and being punched, slapped and kicked, often by police officers wearing heavy boots. Many detainees report experiencing pain and difficulty walking or sitting for weeks after detention.

In recent years, AF lawyers have observed an increase in reports of psychological torture in detention. Detainees describe cases where police have threatened to detain their families if they do not sign a confession or charge them with a more serious offence than the one they were arrested for (such as drug smuggling instead of theft). The Center for Victims of Torture notes that 'psychological torture can be more damaging and cause more severe and long-lasting damage than the pain of physical torture'.<sup>9</sup>

### **B. Torture rates by district**

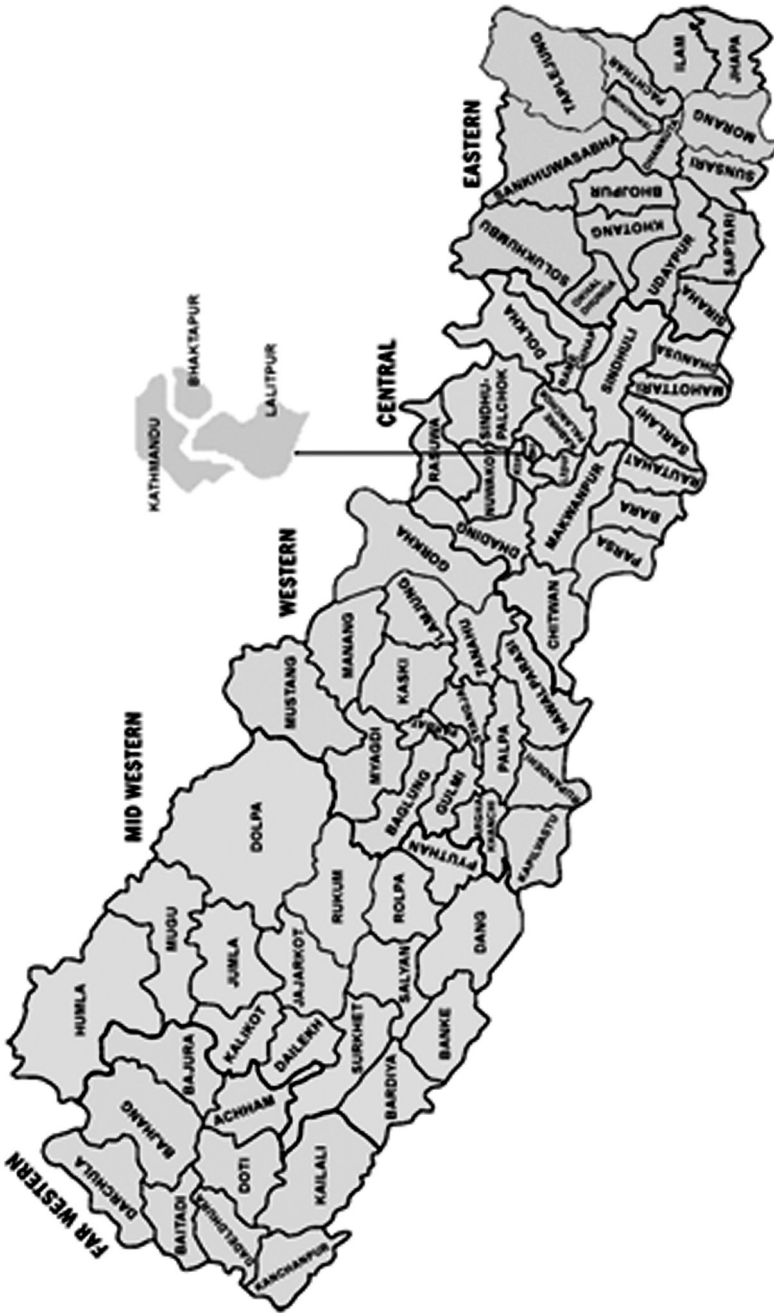
Torture rates vary significantly by location, with certain districts displaying consistently higher levels of reported torture and ill-treatment among their detainees.<sup>10</sup> In 2014, AF collected data from 15 districts. This analysis covers the nine districts with sample sizes of 70 or greater – Banke, Kathmandu, Jhapa, Baglung, Kaski, Morang, Rupandehi, Kanchanpur and Dolakha (Figure 3).<sup>11</sup> The average rate of torture across these districts was 16.8%. The districts of Banke, Kathmandu and Jhapa showed rates of torture significantly above the mean – as high as 32.6% in Banke – whereas those detained in Morang, Rupandehi, Kanchanpur and Dolakha reported levels of torture much lower than the mean (as low as 0.8% in Dolakha).<sup>12</sup>

<sup>9</sup> The Center for Victims of Torture, *Effects of Psychological Torture* (August 2011), available at [http://www.cvt.org/sites/cvt.org/files/u18/CVT\\_EffectsOfPsychologicalTorture\\_August2011.pdf](http://www.cvt.org/sites/cvt.org/files/u18/CVT_EffectsOfPsychologicalTorture_August2011.pdf). See also: Hernán Reyes, 'The worst scars are in the mind: psychological torture' (2007) 89(867) *International Review of the Red Cross* 591, available at <https://www.icrc.org/eng/assets/files/other/irrc-867-reyes.pdf>

<sup>10</sup> Further details can be found in the tables contained in the Annex.

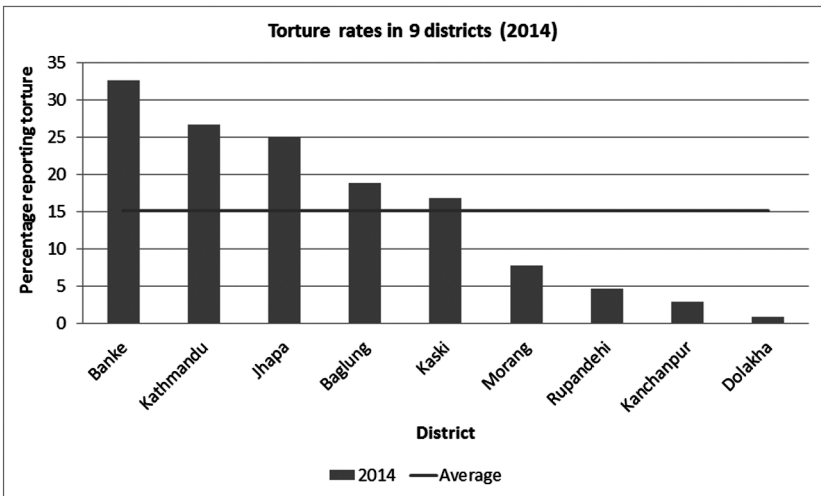
<sup>11</sup> The districts of Parbat, Myagdi, Udhayapur and Ramechhap were omitted from this analysis due to their small sample sizes (fewer than 40 detainees interviewed in each).

<sup>12</sup> <http://lkamal.com.np/wp-content/uploads/map.gif>



Map 1: Districts of Nepal

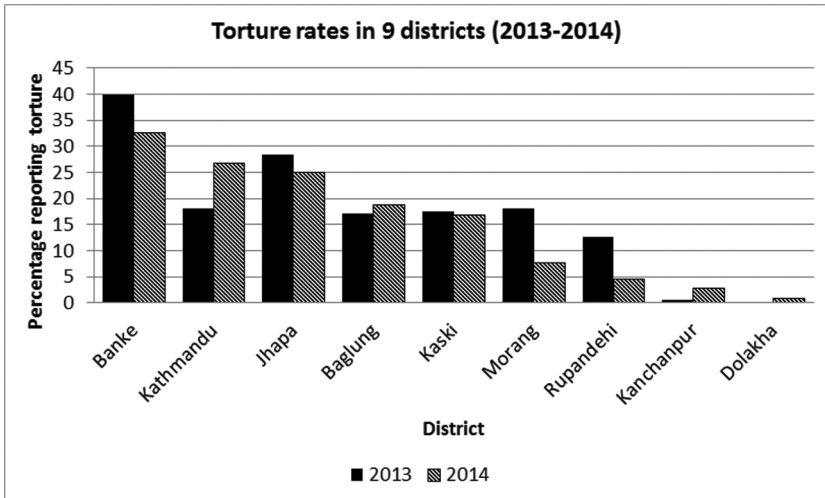
One potential reason for this discrepancy is that the districts with high levels of reported torture (Banke, Kathmandu and Jhapa) are heavily urbanised and subject in general to higher rates of crime. Furthermore, Banke and Jhapa are border districts in the Terai – areas susceptible to cross-border smuggling and criminal activities. However, Morang, Rupandehi and Kanchanpur are also heavily populated districts in the Terai sharing a border with India, yet they appear to have much lower rates of reported torture.<sup>13</sup> It appears, therefore, that geography, urbanisation and crime rates may be factors explaining the larger numbers of arrests in those districts, but are unlikely to adequately account for this wide variation in rates of torture between them.



**Figure 3: Rates of reported torture by district (2014)**

When examining patterns of torture in these districts over time, three districts show significant changes in the rates of torture between 2013 and 2014 (Figure 4). These are Kathmandu, where the level of reported torture increased significantly in 2014 (from 18.1% to 26.7%), and Morang and Rupandehi, where the rate of torture significantly decreased from 2013 to 2014. Banke, Jhapa and Baglung saw no significant changes in rates of

<sup>13</sup> <http://www.citypopulation.de/php/nepal-admin.php>



**Figure 4: Rates of reported torture by district in 2013 and 2014**

*Case study: Banke*

Raj Shah<sup>15</sup> is an owner of a small business in Banke district. On 2 September 2014 he was visited by four plain clothes police officers, including the Head Constable of Ganapur Police Station, who searched his shop and accused him of smuggling drugs. According to several witnesses, the police officers



searched the shop and were unable to find anything but took Raj Shah to Ganapur Police Station. His wife and several other observers who followed him there were prevented from entering the backyard of the station where he was taken. Raj Shah told AF that the policemen started punching and kicking him, intermittently asking him to hand over the drugs. He said ‘they kicked me like a football, throwing me from here to there. While kicking

<sup>14</sup> Note: Kanchanpur and Dolakha could not be measured in this way because they fail the essential pre-condition tests, as explained in the Methodology section of this report.

<sup>15</sup> Name has been changed.

and punching me some of them pulled and pushed me by grabbing my hair'. The policemen then allegedly forced Raj Shah to lie on the ground as two of them stood on his legs and another beat the soles of his feet with a stick around 20 times. Raj Shah says he was forced to jump on his injured feet, kneel on all fours as he was beaten with sticks on his back and buttocks for about 15 minutes, and then made to stand as three policemen punched and kicked his body.

That evening, he was taken to the Armed Police Force Camp in Nepalgunj. He told AF that a police officer there stood on his legs for 6 or 7 minutes with his heavy boots and pulled his hair. The officer showed Raj Shah a packet of heroin, saying that it belonged to him. He was kept there for around 20 minutes. Meanwhile, Raj Shah's wife said that two policemen had returned to the shop, asking her to hand over drugs in exchange for her husband. She asked to speak to her husband on the phone, but Raj Shah says the police immediately cut off the call.

Raj Shah was then moved to the Area Police Office in Kohalpur where he was detained for one night. He was told that he would only be released if he told the Officer In Charge that he used and sold drugs, so he did. He says he was not tortured further after that moment. The next day Raj Shah was visited by some villagers, who reported his deteriorating health to the National Human Rights Commission. After giving his story to a human rights officer, Raj Shah was questioned repeatedly by the police about what he had reported. Raj Shah's 18-year-old son informed AF that around that time police officers again visited the shop, this time with a report stating that 600mg of heroin had been seized from the store. The son and another witness refused to sign the document, saying that the accusations were false. Later that evening, Raj Shah was told that he would be released and was taken to Nepalgunj Medical College to be treated for his injuries. According to the AF lawyers who interviewed him, Raj Shah had visible large black marks across his hips and buttocks and seemed upset and confused about what had happened to him.

*Case study: Kathmandu*

Mahendra Bahadur<sup>16</sup> was arrested in Kathmandu on 11 January 2014. He was accused of being involved in a theft committed by his uncle and was

<sup>16</sup> Name has been changed.

taken to the Metropolitan Police Range in Hanumandhoka with his wife and children. There, he says he was slapped, handcuffed and blindfolded, then hit all over his back, thighs and body with a bamboo stick while the police officers questioned him about the theft. He reported having to lie on the ground as the soles of his feet were hit with the bamboo rod, and then being made to jump up and down. Mahendra told AF that an unknown number of officers beat and interrogated him for about two hours before he was detained overnight.

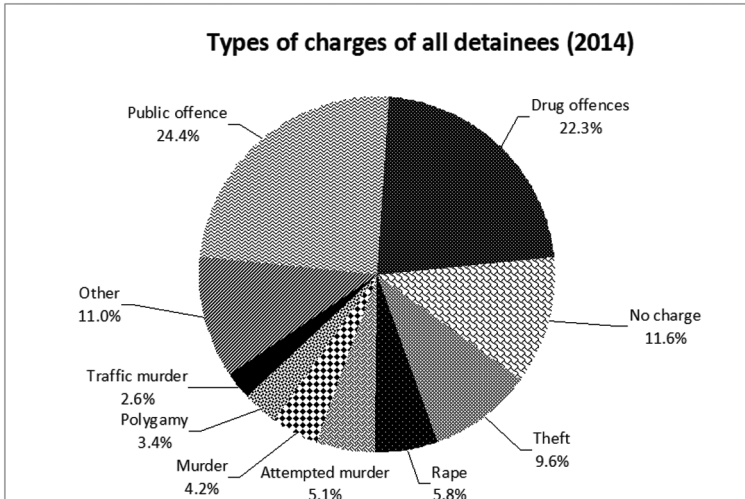
The next morning, Mahendra says he was taken to the same interrogation room by five policemen and was again blindfolded and beaten indiscriminately on his legs, soles, back and thighs with a bamboo stick. The police officers allegedly threatened to detain his wife and children if he did not confess to the crime, so he confessed. Mahendra says they searched his property but found only a small amount of money and none of the stolen goods. The police then charged him with narcotics and banditry. He was taken to Bir Hospital for a health examination, but says the doctor only asked whether he was drunk and did not examine his injuries or provide any treatment. Mahendra told AF that he was too afraid to tell the doctor about his wounds because the police officers remained in the room, and that he suffered pain and bruising to his feet, back and thighs for approximately two weeks. That day, he was transferred to Metropolitan Police Circle Boudha where he said he was made to sign a statement without being given it to read. AF has no information on further developments in the case of Mahendra since March 2014.

### **C. Torture rates by charge**

AF analyses rates of torture by charge to determine whether being arrested for certain offences correlates with a higher risk of being tortured. The most common offences detainees were charged with in 2014 were: public offences (24.4%),<sup>17</sup> drug offences (22.3%) and theft (9.6%), as well as 11.6% of detainees who were held without charge. These proportions have remained fairly consistent over the past two years. A breakdown of the proportion of detainees charged with each offence is shown in Figure 5.<sup>18</sup>

<sup>17</sup> Public offences include offences such as causing disturbance, fighting and drinking in public.

<sup>18</sup> The 'other' category incorporates charges for (in order from highest to lowest proportions): forgery, human trafficking, forest offences, arms and ammunition, cheating, kidnapping, black



**Figure 5: Proportion of detainees charged with each offence (2014)**

In absolute numbers, most torture appears to be practiced on those charged with public offences, drug offences and theft. Of all people detained under these three charges, torture or other cruel, inhuman or degrading treatment was reported in 21.3% of cases, compared with 9.7% of cases for all other charges. Figure 6 shows the absolute numbers of torture cases broken down by charge.

The high numbers of torture cases for public offences and drug offences correspond to the large number of detainees arrested on these charges. However, data collected by AF show that there is significant variation in the rates of torture depending on the offence that the person is charged with. Those charged with theft report being subjected to torture or other cruel, inhuman or degrading treatment at a much higher rate (38.8%) than those arrested on other charges (an average of 16.6%). Drug offences, public offences and rape appear to attract rates of torture close to the average, whereas charges of human trafficking, forgery, polygamy and traffic murder are associated with much lower rates of torture than average (Figure 7).

The disproportionate use of torture on those charged with theft is likely to do with the fact that in cases of theft the police are under significant pressure to arrest the culprit and locate the stolen items. As such, torture is likely to

---

market, arson, child marriage, gambling, traffic deformities, cow slaughtering, unnatural sex, attempted rape, deformities, witchcraft, explosives and caste discrimination.



be frequently employed in theft cases in an attempt to obtain confessions and information regarding the whereabouts of the stolen objects. If the police are unable to obtain evidence to support the theft charge, it is reported that they sometimes change the charge to public offence, which has fewer evidentiary requirements.

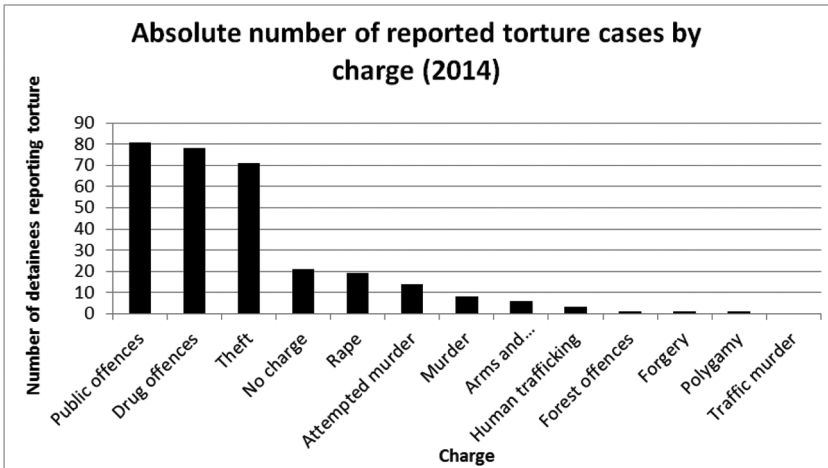


Figure 6: Absolute number of detainees reporting torture by charge (2014)

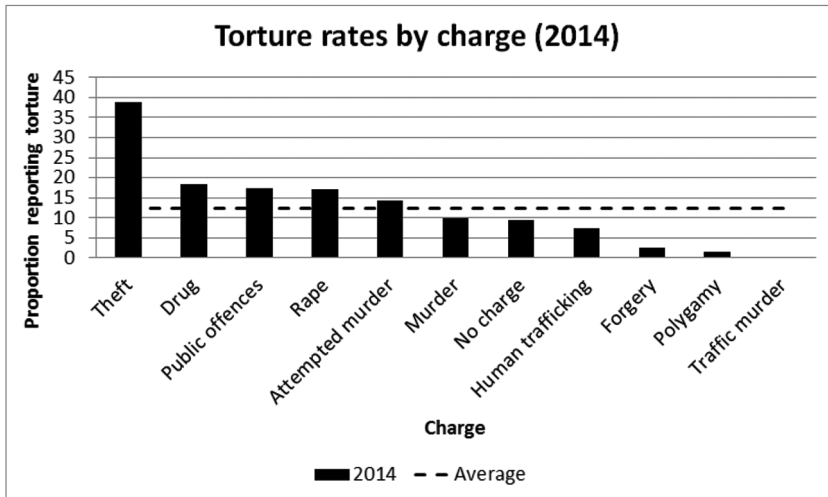
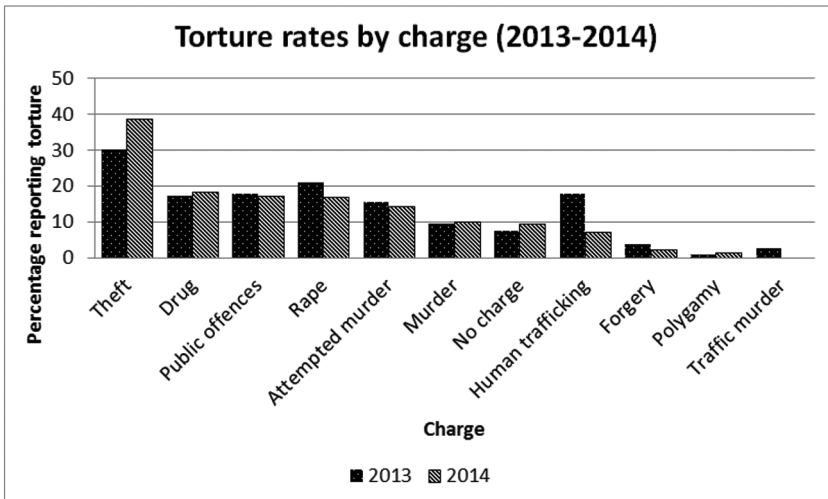


Figure 7: Rates of reported torture by charge (2014)

When compared to information gathered in 2013, it appears that reported torture rates have stayed fairly consistent for each type of charge over the last year. One exception is torture of those charged with theft, which increased markedly from 30.3% to 38.8%. While this rise falls just short of statistical significance, it is nonetheless strongly suggestive of a real increase.<sup>19</sup> Apparent decreases have occurred in the reported rates of torture of those charged with rape and human trafficking, but with the available sample size, these fail to meet the requirements for statistical significance (Figure 8).<sup>20</sup>

In summary, it is possible to conclude from these data that rates of torture vary depending on what the person is charged with. Furthermore, these figures do not appear to have changed in any significant way from the previous year, with the possible exception of theft.



**Figure 8: Rates of reported torture by charge in 2013 and 2014**

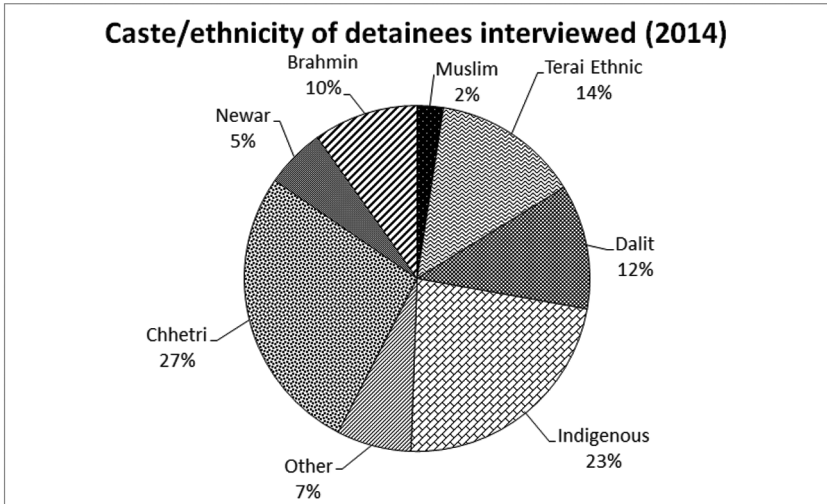
#### D. Torture rates by caste/ethnicity

AF analyses torture cases based on caste and ethnic background in order to identify whether certain social groups are more vulnerable to torture in detention. Of the 1,916 detainees interviewed by AF in 2014, 50%

<sup>19</sup>  $P = 0.0518$

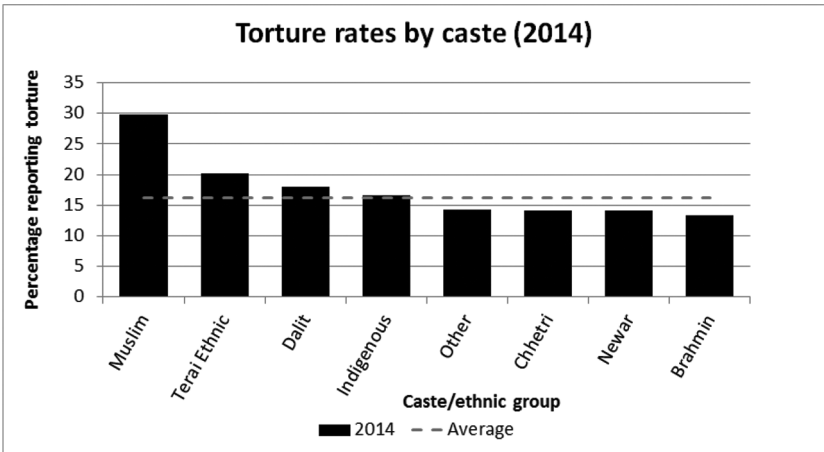
<sup>20</sup> The category of human trafficking fails to meet the essential preconditions for the hypothesis test.

belonged to the Chhetri caste or the indigenous community. The next most represented communities were Terai ethnic groups, Dalit and Brahmin castes. Detainees identifying themselves as belonging to other ethnic groups not specifically mentioned in the questionnaire are listed as ‘other’ (Figure 9).



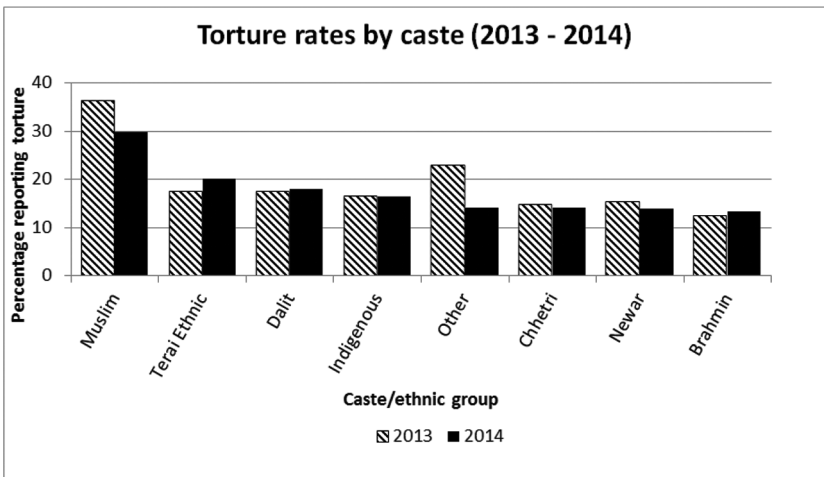
**Figure 9: Proportion of interviewed detainees belonging to each caste/ethnic group (2014)**

According to AF’s data, most castes and ethnic groups reported fairly similar rates of torture around the 16.2% average, whereas 29.8% of Muslims reported torture or other cruel, inhuman or degrading treatment in 2014 (Figure 10). While this appears to represent some difference in the treatment of detainees based on social group, there is not sufficient evidence from the information collected by AF that people are tortured at different rates based on caste or ethnicity. Nevertheless, the fact remains that consistently over the years, the social groups considered to be “low caste” are reporting being tortured more frequently than those considered “high caste”. It is worth noting that the sample size for Muslims was much lower than other groups. Were this higher, it is possible a significant difference would be found.



**Figure 10: Rates of torture as reported by each caste/ethnic group (2014)**

Figure 11 compares torture rates of castes and ethnic groups from 2013 to 2014. It reveals that while there was some drop in the reported torture rate of Muslims and ‘other’ ethnic groups in 2014, rates of torture by caste seem to be fairly consistent over this time period and have not seen any significant fluctuations.



**Figure 11: Rates of torture as reported by each caste/ethnic group over 2013 and 2014**



## 4. TORTURE TRENDS IN VULNERABLE GROUPS

---

### A. Gender

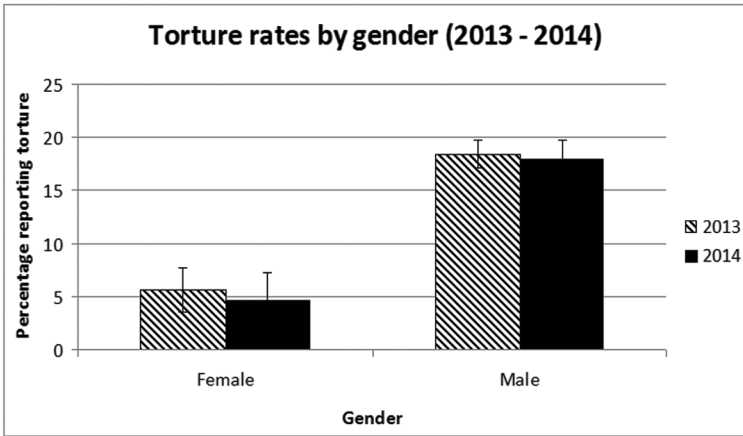
In 2014 AF visited 239 female detainees, comprising 12.5% of all detainees. Eleven of those detainees (4.6%) reported experiencing torture or other cruel, inhuman or degrading treatment while in detention. This is significantly lower than male detainees, who report being subjected to torture at a rate of 17.9%. These figures have not changed significantly since 2013 when 5.7% of women and 18.4% of men claimed to be victims of torture, but this slight decrease gives AF hope that the longer-term downward trend identified in AF's yearly analysis will continue (Figure 12).

While the relatively low torture rate for women is positive, it should be noted that women may experience torture differently to men. Police violence may retraumatise women who have been abused in the past, or the torture itself may be gendered through, for example, threats of rape. The police may also use gender biases in society to justify or excuse the ill-treatment, as in the case of Sita (see below), where police officers claimed the girl's injuries were inflicted by her brother because she had brought shame upon the family.

#### *Case study: Sita*

Sita<sup>21</sup> was 14 years old when four police officers arrested her in her home in Banke on 15 May 2014. She was accused of stealing a teacher's bag containing Rs 10,000 (approximately USD\$100) and some bank documents. Sita recounted to AF:

<sup>21</sup> Name has been changed.



**Figure 12: Proportion of male and female detainees reporting torture over 2013 and 2014. The error bars represent a 95% confidence interval.**

‘I was taken into a back room of one of the houses in my yard by two policemen who asked me about the bag. When I told them I didn’t know anything about the bag, one kicked my thigh saying I was lying. One of the policemen asked whether I was married or not. When I told him I was unmarried, he said they would celebrate marriage with me after getting drunk that night. While beating me, police officers also beat my mother in the same room. They hit her with a rifle butt in her armpit and also injured her eyes.’

Sita and her mother (who was accused of being complicit in the theft) were then taken in a van to the Ward Police Station in Nepalgunj. There, she says two police officers kicked her and hit her thighs with a plastic pipe, then threatened her by holding a bottle of unknown liquid over her and shaking it. Two or three drops fell out, burning through her pants and leaving black spots on her leg. Her mother allegedly received the same treatment, urinating in her pants from the pain of the beatings. Sita continued to deny the allegations. Then, she says, two police officers took her to the toilet and forced her to drink a green bitter liquid from a small bottle. Sita describes feeling intoxicated and confessing to the allegations as a result. However, the police were unable to locate the stolen bag.

That evening, Sita and her mother were taken to the District Police Office in Banke where a police officer allegedly told her that if anyone asked about her injuries she should say her brother had beaten her. The next day, Sita and her mother were released after paying Rs 1,000 (USD\$10) to the police for

the food they had received and her brother gave Rs 10,000 to the teacher. Police officers interviewed by AF denied the allegations – although one constable admitted hitting Sita twice with a stick – and said the women had been beaten by male relatives because they had humiliated their family. AF observed that Sita had two to three black spots on her thigh and long bruises on her left shoulder. Sita's mother told AF her whole body was in pain and she was unable to breathe because of the pain in her armpit.

## B. Juveniles

Nepalese law defines a juvenile as any person aged 16 and under.<sup>22</sup> This is contrary to the UN Convention on the Rights of the Child<sup>23</sup> and the UN Rules for the Protection of Juveniles Deprived of their Liberty<sup>24</sup> which state that a child is any person below eighteen. Furthermore, the minimum age for criminal responsibility in Nepal is ten years, contrary to the view of the Committee on the Rights of the Child, which considers a minimum age of criminal responsibility below 12 years as unacceptable.<sup>25</sup> It should be noted that age verification to confirm that the child is over ten years old is rarely undertaken by the police. For the purposes of this report, AF defines a juvenile as a person aged 18 or under.

AF spoke to 360 juvenile detainees in 2014, constituting 18.8% of the total detainee population interviewed. Eighty-seven of these young people (24.1%) reported being victims of torture or other cruel, inhuman or degrading treatment in detention. This is significantly higher than the rate of reported torture among the adult population (14.4%), as well as in the overall detained population (16.2%). It is also slightly higher than the rate observed in 2013, when 23.1% of juveniles reported experiencing torture. AF is extremely concerned that juveniles remain at such a high risk of torture by police (Figure 13).

While the number of young people detained increases in line with the increasing age bracket, the number of those reporting torture does not. Thirteen year olds and sixteen year olds in particular reported much higher

<sup>22</sup> Children's Act, May 1992, art 2(a).

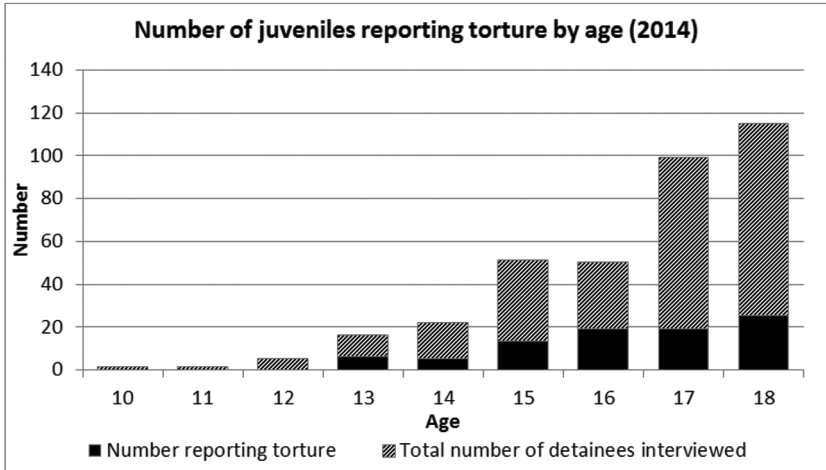
<sup>23</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 1.

<sup>24</sup> UN Doc A/RES/45/113 (14 December 1990).

<sup>25</sup> CRC/C/GC/10, para 32.



rates of torture (38%) than average (24.1%), although these variations in rates of torture by age fail to meet the requirements for statistical significance.



**Figure 13: Number of juveniles reporting torture by age (2014)**

As is the case with the overall detainee population, rates of torture of juveniles vary significantly by district. Banke reports torture rates of juveniles (51.3%) significantly above the mean (24.1%). Baglung also shows a concerning rate of 72.7%, however this sample size is too small to meet the preconditions for a significance test (Figure 14). Figure 15 further shows that Baglung, Banke and Kathmandu appear to torture juveniles at almost double the rate of adults.

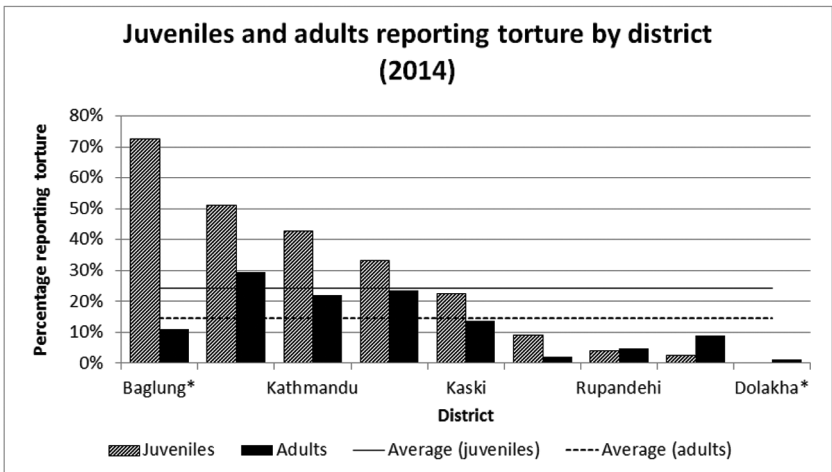
*Case study: Rajendra and Anjay<sup>26</sup>*

On the morning of 3 August 2014, Rajendra and Anjay – two boys in their late teens – were arrested in the district of Bardiya on charges of theft. They told AF that they were taken to Dhodhari Police Station by four policemen,



<sup>26</sup> Names have been changed.

where they were forced to stand upside down against a wall while they were beaten with sticks. Rajendra estimated that he was beaten four times on the soles of his feet; five or six times on his hips, back and hands; and his cheeks were slapped four or five times. Anjay told AF he was hit three times on his hips. Then, they were allegedly taken outside and made to crawl on their knees and elbows on the gravel for around ten minutes. Rajendra reported that they were then ordered to do frog jumps for ten minutes before being forced to lie in stress positions.



**Figure 14: Rate of reported torture of juveniles and adults according to district (2014)**

In the afternoon, the two boys were taken to the District Police Office, Bardiya. They told AF that they were interrogated there by three police officers who questioned them about the items they had supposedly stolen. One policeman allegedly grabbed Anjay's hair and banged his head against the wall, demanding that he confess. Rajendra said the other policemen forced him to bend down on his knees and elbows and proceeded to hit the soles of his feet and his hips with a stick. After that, both boys said they were made to slap each other's cheeks four times.

When AF lawyers visited the pair two and a half weeks after their arrest, healed wounds on Anjay's elbow and Rajendra's back were visible. Both boys said they had suffered pain for two days as a result of their torture. The

boys later told AF that they had been scolded by the police for disclosing the incident to human rights lawyers and had been forced to sign a document stating that they were not tortured by police and that the wounds were caused by boils. They also said that they were made to sign a statement at the public prosecutor's office without being told what it contained. They were released from detention a month after their arrest when their families paid bail.

## 5. THE TORTURE BILL

---

In August 2014 the Ministry of Home Affairs tabled the Torture or Cruel, Inhuman or Degrading Treatment (Offence and Punishment) Bill in Parliament. This proposes to criminalise torture, to provide a mechanism for the investigation and prosecution of torture complaints, and to provide compensation to victims. The Bill tabled is very similar to the bill tabled in April 2012, prior to the dissolution of the Constituent Assembly.<sup>27</sup> It has not been subjected to public consultation, and has not yet been debated by Parliament, but is expected to be considered soon.

The tabling of the Bill is a positive development, although public consultation would be welcomed on its content. The Bill presented to parliament is a substantial improvement on the current legal framework and contains many positive provisions which would, if implemented, go a long way towards fulfilling Nepal's obligations under the United Nations Convention Against Torture (CAT) and other international treaties on human rights. However, there are a number of key provisions that must be amended prior to enactment to ensure that the Bill is able to achieve its goals, and that Nepal meets its international legal obligations. There are also a number of further provisions that Parliamentarians should consider including to better enable the objectives of the Act to be achieved.

### A. International obligations in relation to torture

International human rights treaties enshrine detailed obligations in relation to torture and other ill-treatment. Under the CAT, state parties have obligations

<sup>27</sup> For more details on the 2012 bill, see further Advocacy Forum, 'Torture of Women: Nepal's Duplicity Continues', June 2012, [http://advocacyforum.org/\\_downloads/torture-of-women-report-june-26-2012-english.pdf](http://advocacyforum.org/_downloads/torture-of-women-report-june-26-2012-english.pdf), pp. 52-59.

(among other things) to prevent torture and other ill-treatment (Art. 2), make them offences under criminal law (Art. 4), investigate and prosecute or extradite suspected torturers (Art. 5-7 and 12), allow individuals to make complaints of torture and other ill-treatment and have those complaints impartially examined (Art. 13) and ensure that victims of torture and other ill-treatment obtain redress for the torture committed against them (Art. 14).<sup>28</sup>

In carrying out these obligations, domestic definitions of torture must be at least as wide as the UN Convention Against Torture, which defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>29</sup>

It is clear that domestic definitions of torture must therefore at least cover actions by any public officials or person acting in an official capacity, inflicted in any context that fulfil the other elements of the definition. The Committee against Torture has clarified that ill-treatment, equally prohibited, but not defined in the CAT, ‘differs in the severity of pain and suffering and may not require proof of impermissible purposes’.<sup>30</sup>

To meet its obligations to provide redress to victims, the Committee against Torture has stated that this ‘includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition’.<sup>31</sup> Reparation ‘must be adequate, effective and comprehensive’, ‘should be tailored to the particular needs of the victim’, and ‘be proportionate in relation to gravity of the violations committed against them’.<sup>32</sup> The definition of who amounts to a victim entitled to redress should be wide, and include:

<sup>28</sup> In relation to Ill-treatment, see CAT, General Comment No. 2: Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007), para. 6.

<sup>29</sup> CAT, Art. 1.

<sup>30</sup> CAT, General Comment No. 2, para. 10.

<sup>31</sup> CAT, General Comment No. 3: Implementation of Article 14 by States Parties (2012), CAT/C/GC/3, para. 6.

<sup>32</sup> *Ibid.*

persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.<sup>33</sup>

To ensure compliance with the CAT, these definitions should be reflected in the Bill.

## **B. Positive aspects of the Bill**

The Bill has many positive aspects, including that it:

- criminalises torture, and cruel, inhuman or degrading treatment (Sec. 3 and 5), and prescribes punishment for the crimes, including imprisonment (Sec. 22);
- defines torture and cruel, inhuman or degrading treatment (Sec. 2), and provides an illustrative list of acts that would amount to torture (Sec. 4);
- provides a rebuttable presumption that bruises, wounds or scars visible on a person in detention were inflicted by torture (Sec. 6);
- puts a positive duty on officers in charge to prevent torture or ill-treatment, and a rebuttable presumption of responsibility of the superior officer where torture or ill-treatment by those under his or her command is proved (Sec. 7);
- imposes a positive duty on all officials to inform a superior if they have knowledge that torture is to be inflicted (Sec. 8);
- provides for command responsibility, and disallows any defence of acting under orders (Sec. 10);
- sets out a system of receiving complaints and investigation and prosecution of complaints, including the possibility of detaining those under investigation (Sec. 13-21);
- provides the possibility of awarding compensation to the victim (Sec. 23) and a 35-day time limit within which such awards must be executed (Sec. 24);

<sup>33</sup> *Ibid.*, para. 3.

- provides for a system of health check-ups of detainees (Sec. 25-26) and the possibility for witnesses to apply to the Court for protective measures (Sec. 28);
- provides that any confession obtained by torture is inadmissible as evidence in any case against the person (Sec. 29);
- incorporates the rule of *non-refoulement*, that is that the Government is prohibited from extraditing persons to another state where there are substantial grounds for believing that he or she would be subject to torture or ill-treatment (Sec. 36).

If enacted and properly implemented, these provisions would contribute to the prevention of torture in Nepal, and significantly improve the prospects of victims of torture receiving justice and reparation.

### C. Priorities for amendment

A number of provisions in the Bill have the potential to undermine its objectives. These issues will have a major impact on whether the Bill is able to provide justice to victims of torture and ill-treatment.

**As a priority, five provisions of the Bill must be amended if the Bill is to meet Nepal's obligations under the Convention Against Torture. These are:**

- **removal of the extremely short time limits for filing a complaint (Sec. 13) and filing the charge sheet (Sec. 31)**
- **amendment of the punishment provisions, which would allow those convicted of torture to be sentenced to payment of a fine only, and which provide for a maximum period of imprisonment of 5 years if imprisonment is ordered (Sec. 22)**
- **removal of the cap on the level of compensation that can be awarded (Sec. 23)**
- **removal of the provision on filing a false complaint (Sec. 34)**
- **removal of the protection for officials acting in "good faith" (Sec. 35)**

**i. Time limit for filing complaint (Sec. 13) and filing charges (Sec. 31) must be extended**

Like the prevailing Torture Compensation Act (1996) (TCA), the Bill provides that a victim of torture must file a complaint within 35 days of the date or his or her torture or ill-treatment, or upon release from detention (Sec. 13). The Bill also provides that a charge sheet must be filed within six months from the date of offence (Sec. 31). This is in stark contrast to other serious crimes, such as a murder which may be filed within 20 years of the offence.<sup>34</sup>

Both of these provisions will present serious practical barriers to the implementation of the law, and run counter to the specific findings of the UN Committee against Torture and the UN Human Rights Committee in relation to Nepal.

As a **practical matter**, there are many reasons why a victim of torture or ill-treatment may not file a complaint within a 35 day period. A victim may be in genuine fear of the authorities who have carried out the violation, may be suffering from medical and/or psychological injuries flowing from the torture, may lack access to legal advice, or it may be difficult to report because of geographical constraints.<sup>35</sup> Even if a victim is able to file a complaint within 35 days in a given case, the government attorney must then also file the charge sheet within six months of the alleged torture. This has the potential to be another significant barrier to justice, providing a loophole by which, if action is not taken promptly by officials (which, in cases concerning state authorities it may not be), it will be possible for those accused of torture to escape accountability.

Reflecting this, the position under **international law** is clear: these provisions would be in violation of Nepal's obligations under the CAT and the International Covenant on Civil and Political Rights (ICCPR). In 2013 in the case of *Maharjan v Nepal*, the UN Human Rights Committee specifically considered Nepal's current 35-day limit for filing a complaint under the Compensation Relating to Torture Act, and said that it is '**flagrantly**

<sup>34</sup> And two years where a complaint is filed without referring to murder: National Code (Muluki Ain) 2020, Part 4, Chapter 10 (on Homicide), No. 20.

<sup>35</sup> See CAT, General Comment No. 3, para. 38; ECtHR [GC], *Mocanu & Ors v Romania* (2013), Apps. nos. 10865/09, 45886/07 and 32431/08, 17 September 2014, para. 274.



**inconsistent with the gravity of the crime**.<sup>36</sup> The Committee asked Nepal to ‘**amend[...] its legislation so as to bring it into conformity with the Covenant, including the amendment and extension of the 35-day statutory limitation from the event of torture or the date of release for bringing claims ...**’.<sup>37</sup> In 2011, the Committee against Torture also found in relation to Nepal that ‘**[a] victim’s ability to file claims for redress should not be subject to statutes of limitations**’.<sup>38</sup> Enacting this provision as drafted would therefore be directly counter to the views of both the UN Human Rights Committee and the Committee against Torture.

The Committee against Torture has consistently made it clear that under the CAT torture should not be subject to *any* limitation period, and that any limitation period for ill-treatment must be for a significant duration.<sup>39</sup> The Human Rights Committee has also made it clear that unreasonably short periods of statutory limitation must be removed for a State to comply with its obligations under the ICCPR.<sup>40</sup>

**Recommendation:** Amend Section 13 and 31 to remove the time limit for filing complaints, and to remove the statute of limitation for the prosecution of offences or the provision of reparation. If such limitations are included, specify a much longer period and give the Court the discretion to extend the period where reasonable grounds exist to do so. Retaining the provision as it is will stand as a real barrier to the objectives of the Act.

<sup>36</sup> UN HRC, *Maharjan v Nepal*, Comm. No. 1863/2009, 19 July 2012, CCPR/C/105/D/1863/2009, para. 7.6. See also Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant (2004), CCPR/C/21/Rev.1/Add.13, para. 18.

<sup>37</sup> *Ibid.*, para. 9.

<sup>38</sup> CAT, Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party (2012), A/67/44, Annex XIII, adopted 3 June 2011, para. 110(i).

<sup>39</sup> See, eg. CAT, General Comment No. 3, para. 40; Concluding Observations on Slovenia, CAT/C/CR/30/4, 27 May 2003, paras. 5 (Subjects of Concern) and 6(b) (Recommendations); Concluding Observations on Turkey, CAT/C/TUR/CO/3, 20 January 2011, para. 24 (where it expressed concern at a limitation period of 15-40 years).

<sup>40</sup> Human Rights Committee, General Comment No. 31, para. 18.

## ii. Punishment provisions must be strengthened (Sec. 22)

The Bill provides for imprisonment of up to five years for somebody who has committed or ordered torture, and/or payment of a fine of NRs 50,000. This prescribed penalty is increased by 10 percent if the victim is mutilated, raped or sexually assaulted, or where other listed aggravating factors are present (Sec. 22). This means that a person convicted of torture could be sentenced to payment of a fine only.

This provision is not compatible with Nepal's treaty obligations. Under the CAT Nepal must provide appropriate penalties for torture that reflect the grave nature of the crime (Article 4(2)). The Committee against Torture has made it clear that a significant custodial sentence is generally appropriate. While the Committee has not prescribed a rule for the required length of punishment, it has made it clear that a maximum penalty of five years is not sufficient.<sup>41</sup>

The UN Human Rights Committee has also specifically recommended that Nepal should 'adopt [...] legislation defining and prohibiting torture with sanctions and remedies commensurate with the gravity of the crime, in accordance with international standards'.<sup>42</sup>

As a guide to the approach other countries have taken, maximum periods of imprisonment for torture include: Maldives (25 years), Philippines (*reclusion perpetua*, ie. 20-40 years), Indonesia (15 years), Sri Lanka (10 years), Uganda (15 years), England and Wales (life imprisonment), Australia (20 years).

**Recommendation:** Section 22 must be amended to ensure that the punishment on conviction of torture includes a substantial period of imprisonment. The maximum period of imprisonment must also be significantly extended.

<sup>41</sup> Manfred Nowak & Elizabeth McArthur, *The United Nations Convention against Torture. A Commentary*, Oxford University Press, 2008, pp. 249-250.

<sup>42</sup> UN HRC, *Concluding Observations on the Second Periodic Report of Nepal (2014)*, CCPR/C/NPL/CO/2, para. 10.

### iii. Cap on compensation must be removed (Sec. 23)

Although the Bill provides for the provision of compensation to victims, it imposes an arbitrary cap of NRs 500,000 (around US\$ 5,000) on the amount of compensation that may be awarded (Sec. 23). This is a substantial increase upon the NRs 100,000 cap in the TCA, which is repealed by the Bill.

Under the CAT, Nepal must ensure that victims of torture or ill-treatment receive reparation that is adequate, effective and proportionate to the gravity of the crime and the physical and mental harm suffered.<sup>43</sup> Such reparation should be holistic and comprehensive,<sup>44</sup> and compensation alone will not be a sufficient remedy.<sup>45</sup>

In relation to compensation, the Committee against Torture has said that:

compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary. This may include: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education.<sup>46</sup>

Provision for compensation in legislation should therefore not be subject to arbitrary caps. It is clear that NRs 500,000 may not be sufficient to compensate a victim of torture for the forms of loss described by the Committee.

In addition, although the Bill foresees the possibility of other types of reparation being provided for in regulations (including restitution, rehabilitation, satisfaction, and guarantees of non-repetition), they are not addressed in this Bill. The Bill would be significantly strengthened if this opportunity was used to insert more detailed provisions about the provision of other forms of reparation, rather than leaving this completely to further regulation.

<sup>43</sup> CAT, General Comment No. 3, para. 6. See also HR Ctee, General Comment No. 31, paras. 16 and 20, referring to “*appropriate*” remedies.

<sup>44</sup> CAT, General Comment No. 3, para. 6.

<sup>45</sup> *Ibid.*, para. 9.

<sup>46</sup> *Ibid.*, para. 10.

**Recommendation:** The NRs 500,000 cap on the amount of compensation that can be awarded under Section 23 must be removed. Parliamentarians should also consider including more detailed provision for the award of other forms of redress including rehabilitation, restitution, satisfaction and guarantees of non-repetition.

#### iv. Provision on filing a false complaint must be removed (Sec. 34)

The Bill includes a provision allowing for the imposition of a fine on a person who files a false complaint of torture (Sec. 34).

Because of the secretive way in which torture is often carried out, and the fact that it is carried out by those with power, it is notoriously difficult to prove.

The inclusion of this provision in the Act risks dissuading genuine victims of torture from making a complaint, contrary to Nepal's obligations under Article 13 of the CAT. If it can be proved that a person has made a false complaint, mechanisms already exist under the current law to address that.

**Recommendation:** Section 34, providing for imposition of a fine for making a false complaint, should be removed.

#### v. Protection for acting in “good faith” must be removed (Sec. 35)

Although the Bill does not allow superior orders as a defence to the crime of torture or ill-treatment, it does provide that ‘no public official shall be charged or otherwise punished for fulfilling his/her official duty in good faith under current laws’ (Sec. 35).

The prohibition of torture is absolute in international law, and there can be no defence or justification on the basis that a person was acting in good faith. The Committee against Torture has criticised countries which allow a “good faith” defence in relation to torture,<sup>47</sup> and has made it clear that such a provision is not compatible with the CAT. If the elements of torture are proved (the intentional infliction of severe pain or suffering for a prohibited purpose by or with the involvement of an official), “good faith” cannot be an excuse, and will only become a loophole to avoid accountability.

<sup>47</sup> See, for example, Concluding Observations on Israel, UN Doc. CAT/C/ISR/CO/4, 23 June 2009, para. 14, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/64/44](http://www.un.org/ga/search/view_doc.asp?symbol=A/64/44).

**Recommendation:** Section 35, providing protection for officials acting in “good faith” must be removed.

#### **D. Suggested additional provisions to address barriers to justice**

As Parliamentarians consider the Bill, it is important to note that a number of further steps could be taken in the Bill to strengthen the legal framework and address barriers to justice that victims of torture and other ill-treatment face. These include:

- **Complaints procedure:** As drafted, the Bill provides that complaints of torture must be filed before a Court (Sec. 13). However, accessing courts may be difficult for individuals who have been tortured, including for reasons of poverty, lack of knowledge or geographic remoteness. AF recommends that the Bill provide for a wider range of bodies to which a person may complain, and recognise the right of those in detention to be informed of their right to make a complaint and the mechanisms to do so. Bodies to which complaints could be made might include the official in charge of the place of detention, another body carrying out independent monitoring of places of detention, the police, and the National Human Rights Commission. The making of the complaint should then engage a duty to pass that complaint on to the Court.
- **Investigative body:** Under the current Bill the investigative process is instituted and supervised by the Court and carried out under the regular criminal justice system (Chapter 3). However, experience has shown that police and prosecutors are often reluctant to investigate and prosecute torture and other ill-treatment. AF recommends that the Bill could be strengthened significantly by setting up a specialised independent investigative mechanism within the police and district attorney’s office to deal with complaints of serious violations of human rights, including torture and other ill-treatment.
- **Legal aid:** The Bill provides that the victim who makes a complaint may hire their own legal representative to represent their interests during the prosecution of a torture complaint they have raised (Sec. 21). However, many victims lack the resources to hire their own lawyer. Access to justice would be significantly increased – and only really made available and effective in practice – if the Bill provided for legal aid to cover the

costs of the victim's legal representative where victims do not have the means to pay.<sup>48</sup>

- **Rights of victims:** The state should provide victims who have filed complaints of torture with sufficient information on the progress of the proceedings in their case to enable them to pursue their rights and protect their own interests. The Bill should therefore specifically set out their rights – including the rights to information on the progress of the investigation, to participate in proceedings, and to appeal decisions of prosecution authorities.
- **Health check-ups:** A system of health check-ups in detention is a key strategy both to prevent and to provide redress for victims of torture. The Bill provides for the provision of health check-ups “as far as possible”, when a person has been kept in or released from detention (Sec. 25). To ensure that such a system of health check-ups is effective, the Bill should provide that such check-ups are mandatory as soon as possible after a person is arrested, and upon their release (and/or if there is any reason to believe torture has been inflicted).<sup>49</sup> If a detainee or their legal representative requests an examination by an independent physician (as envisaged under the current Bill), the costs of such examination should be covered by the State where the individual does not have the means to pay.
- **Universal jurisdiction:** The CAT requires states to investigate any person on their territory suspected to have committed torture, and – where there is sufficient evidence – to extradite or prosecute the person.<sup>50</sup> Specific provisions should therefore be included to provide jurisdiction over torture committed outside Nepal.

<sup>48</sup> See further CAT, General Comment No. 3, para. 30 (“States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress”).

<sup>49</sup> Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by the Commission on Crime Prevention and Criminal Justice on 21 May 2015, E/CN.15/2015/L.6/Rev.1, Rule 30; UN Office of the High Commissioner for Human Rights (OHCHR), Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**Istanbul Protocol**”), 2004, HR/P/PT/8/Rev.1, para. 126.

<sup>50</sup> CAT, Arts. 5-7.



## 6. POLICE COMPLIANCE WITH PROCEDURAL SAFEGUARDS

---

Nepal has a number of safeguards against torture set out in the Interim Constitution (2007) and the Torture Compensation Act (1996). This section examines several provisions concerning the rights of detainees, namely: the right to be informed of the reasons for arrest,<sup>51</sup> the right to be presented before a judicial authority within a period of 24 hours after arrest<sup>52</sup> and the right not to be compelled to be a witness against oneself.<sup>53</sup> It also assesses whether health check-ups were conducted at the time of arrest and after release, as prescribed by s 3(2) of the Torture Compensation Act.

### A. Reasons for arrest

Article 24(1) of Nepal's Interim Constitution (2007)<sup>54</sup> affirms that no person who is arrested shall be detained in custody without being informed of the reasons for such arrest. Detainees should receive an arrest warrant at the moment of their detention, stating in writing the charges under which they were arrested. Of the 1,916 detainees interviewed by AF in 2014, only 196 (10.2%) were given an arrest warrant before being detained, in accordance with art 24(1). The majority of detainees (77.1%) were given the reasons for their arrest only after they had been detained, and 242 (12.6%) said they never received an arrest warrant at all (Figure 15).

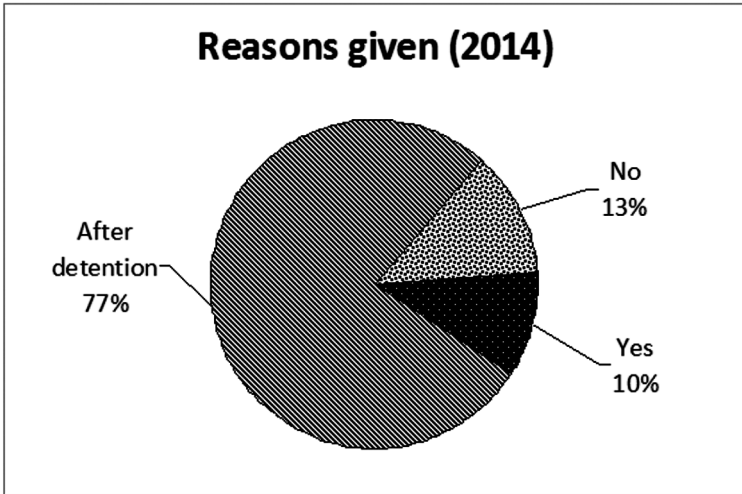
<sup>51</sup> Interim Constitution of Nepal, 2063 (2007), art 24(1).

<sup>52</sup> Interim Constitution of Nepal, 2063 (2007), art 24(3).

<sup>53</sup> Interim Constitution of Nepal, 2063 (2007), art 24(7).

<sup>54</sup> Interim Constitution of Nepal, 2063 (2007), available at [http://www.lawcommission.gov.np/index.php?option=com\\_remository&Itemid=17&func=fileinfo&id=163&lang=en](http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=17&func=fileinfo&id=163&lang=en)





**Figure 15: Proportion of detainees receiving an arrest warrant containing the reasons for their detention before detention, after detention, or not at all (2014)**

The low proportion of detainees receiving arrest warrants at the correct time indicates a failure to comply with the recommendations of the Committee against Torture, which state that ‘[t]he State party should take immediate effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention; these include, in particular,... to be informed of their rights at the time of detention, including about the charges laid against them’.<sup>55</sup> It also indicates a failure to comply with the Human Rights Committee’s recommendation that ‘[t]he State party should take appropriate measure to ensure that no one...is subject to arbitrary arrest or detention and that detained persons enjoy all legal guarantees’.<sup>56</sup>

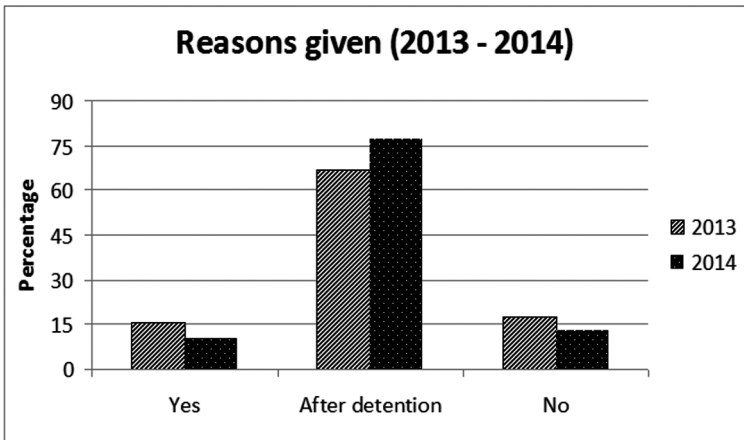
AF is disappointed to note that the proportion of detainees receiving arrest warrants before detention in line with art 24(1) has dropped from 15.4% in 2013. The proportion of detainees receiving the warrant after detention

<sup>55</sup> CAT Article 20 Recommendations 109(c) and 110(d).

<sup>56</sup> UN HCR Concluding Observations on the Second Periodic Report of Nepal (15 April 2014), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fNPL%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fNPL%2fCO%2f2&Lang=en)

increased from 67.1%, while those not obtaining a warrant at all decreased from 17.5% to 12.6% (Figure 16).

AF is aware of numerous cases, including that of a 16-year-old boy in Kathmandu, where a person who was arrested, allegedly tortured, then detained for a number of days had still not received an arrest warrant and detention letter. In the case of the boy, he was released without charge after five days once the AF lawyer intervened.



**Figure 16: Proportion of detainees receiving the reasons for their detention before detention, after detention and not at all, over 2013 and 2014**

## B. Judicial authority within 24 hours

Article 24(3) of the Interim Constitution (2007)<sup>57</sup> enshrines the right of every person who is arrested to be produced before the case trying authority within 24 hours of the arrest. This provision is relevant to 1,695 of the detainees interviewed<sup>58</sup> and, of these, 1,164 (68.7%) were taken to court within 24 hours (Figure 17). This is a significant improvement from 2013, when 62%

<sup>57</sup> Interim Constitution of Nepal, 2063 (2007), available at [http://www.lawcommission.gov.np/index.php?option=com\\_remository&Itemid=17&func=fileinfo&id=163&lang=en](http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=17&func=fileinfo&id=163&lang=en)

<sup>58</sup> Of the detainees interviewed, 221 were not taken to court for legitimate reasons, such as being released without charge. Therefore, they have not been included in this section of the report.

of detainees were taken to court within the appropriate period of time. Just under a third of detainees interviewed in 2014 (31.3%) were not produced before a judicial officer within 24 hours, a decrease from 38% in the previous year (Figure 18).

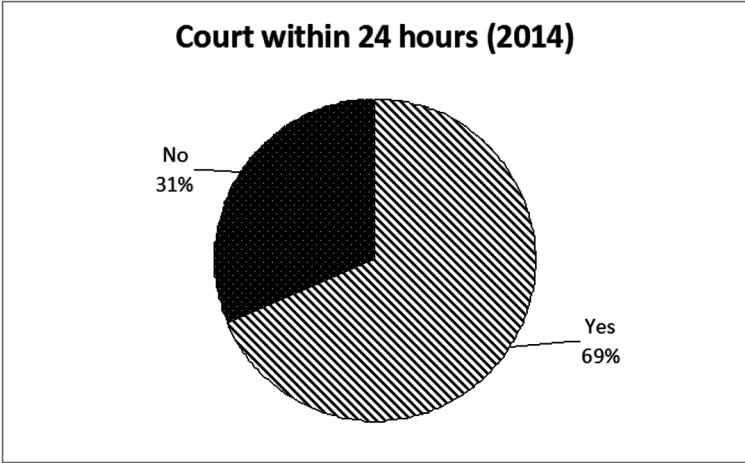


Figure 17: Proportion of detainees produced before a judicial authority within 24 hours (2014)

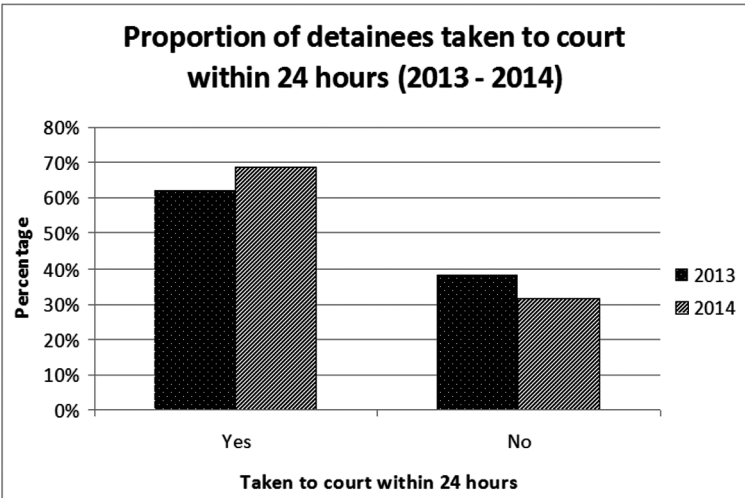
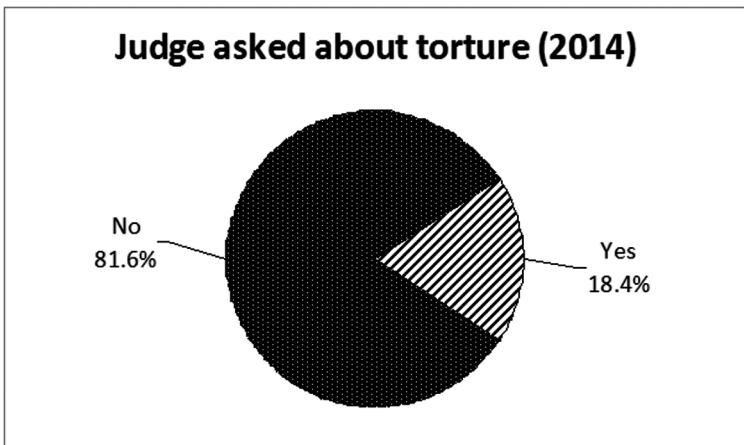


Figure 18: Proportion of detainees produced before a judicial authority within 24 hours (2013 and 2014)

AF lawyers interviewed a 16-year-old boy in Banke, who said he was arrested by 10 to 15 policemen at 11pm while sleeping in his home. He was charged with committing a public offence and told AF that during detention he was kicked, punched and beaten with plastic pipes until he confessed to the crime. He was illegally detained at the District Police Office for five days before being brought before a judicial authority, contrary to art 24(3) of the Interim Constitution.

Of those brought before a court or other judicial authority, only 18.4% were asked by the judge whether torture or other cruel, inhuman or degrading treatment had occurred during detention. In contrast, 81.6% (1,383 of the detainees) were not asked about torture by the judge or judicial authority. This is a slight improvement from 2013, when 82.2% of detainees said they had not been asked about torture when appearing in court (Figure 19). There is currently no legal procedure that obliges judicial officers to ask about torture or other cruel, inhuman or degrading treatment. However, AF works to educate judges about the importance of asking detainees in court about the infliction of torture, as this can help to deter police officers from engaging in such practices.



**Figure 19: Proportion of detainees who were asked by the judge if they had experienced torture or other cruel, inhuman or degrading treatment during detention (2014)**

The fact that a significant proportion of detainees were not brought before a judicial authority within 24 hours shows a failure to comply with the recommendations of the Committee against Torture, which state that '[t]he State party should take immediate effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention; these include, in particular, the right...to appear before a judge within the 24-hour time limit' and also 'police stations should not hold detainees without presentation before a judge beyond the 24-hour period prescribed by the law'.<sup>59</sup>

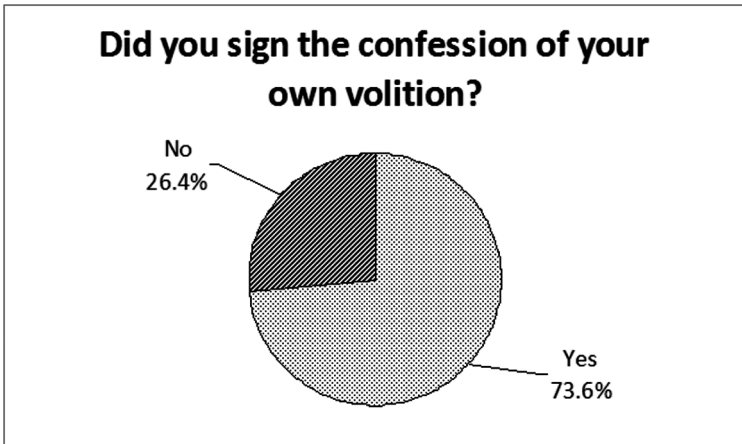
### **C. Right against self-incrimination**

It is common for police in Nepal to extract confessions (often through torture) and use them as evidence in judicial proceedings. This is in spite of article 24(7) of the Interim Constitution, which states that '[n]o person charged with an offence shall be compelled to testify against him/herself'. The willingness of judges to admit confessions without investigating whether they were obtained under torture or other cruel, inhuman or degrading treatment encourages the use of torture in detention centres.

AF modified its questionnaire on torture in 2013 to include questions on how confessions were obtained and used in judicial proceedings. In 2014, AF used this questionnaire with 1,352 detainees in six districts.<sup>60</sup> AF found that 49.3% of detainees interviewed (666) said they had signed a confession. Of those who had signed confessions, 26.4% (176) claimed they did not sign it of their own volition. This figure has not changed since 2013, when 26.3% of detainees who had signed confessions told AF that they had not signed it of their own free will. It is troubling that a quarter of all confessions may be given under duress, yet the vast majority (81.6%) of detainees appearing in court are never questioned about whether torture or other cruel, inhuman or degrading treatment has taken place (Figure 20).

<sup>59</sup> CAT Article 20 Recommendations 110(d) & (k).

<sup>60</sup> These districts are Kathmandu, Kaski, Biratnagar, Banke, Kanchanpur and Rupandehi.



**Figure 20: Proportion of detainees who had signed their confession of their own free will (2014). Sample only includes those who said they had signed a confession.**

These statistics show a failure to abide by the Committee against Torture’s recommendation that ‘the prosecution should carry the burden of proof that the confession was made freely’,<sup>61</sup> as well as the recommendation of the Human Rights Committee that ‘[t]he State party should take effective measures to guarantee the right to a fair trial. In particular, the State party should effectively ensure the right to remain silent in practice,... that no defendant should be compelled to give evidence and ensure that evidence which is the result of coercion is inadmissible’.<sup>62</sup>

#### **D. Health check-ups**

Under section 3(2) of the Torture Compensation Act, detainees are entitled to receive health check-ups before and after detention. AF’s data from 2014 indicate that 1,791 detainees (93.5%) received a health check-up (Figure 21). This is a slight decrease from 94.9% in 2013, but nonetheless a positive result (Figure 22). However, there are a number of problems in the way health

<sup>61</sup> CAT Article 20 Recommendation 110(g).

<sup>62</sup> UN HCR Concluding Observations on the Second Periodic Report of Nepal (15 April 2014), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fNPL%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fNPL%2fCO%2f2&Lang=en)

check-ups are undertaken which undermine the purpose of this provision. Detainees have reported that often these visits are not private and police officers remain in the room, preventing victims from mentioning torture to the doctor out of fear. Other detainees have described health check-ups that are completely inadequate, and involve the physician questioning the detainee about his/her intoxication instead of examining any injuries resulting from torture. As such, this provision is insufficient to protect detainees from torture.

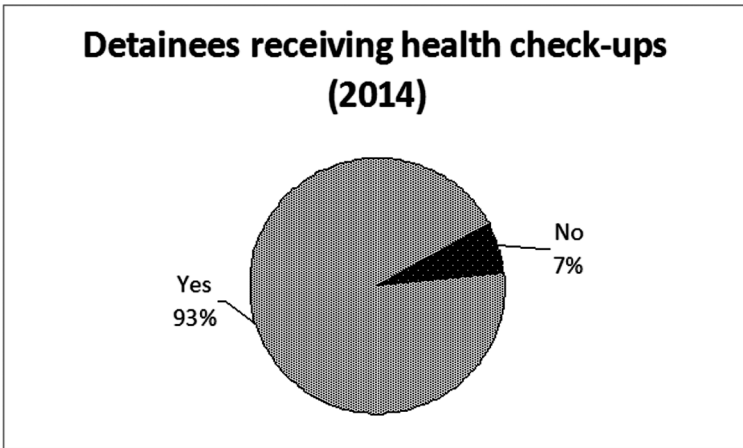


Figure 21: Proportion of detainees receiving health check-ups in 2014

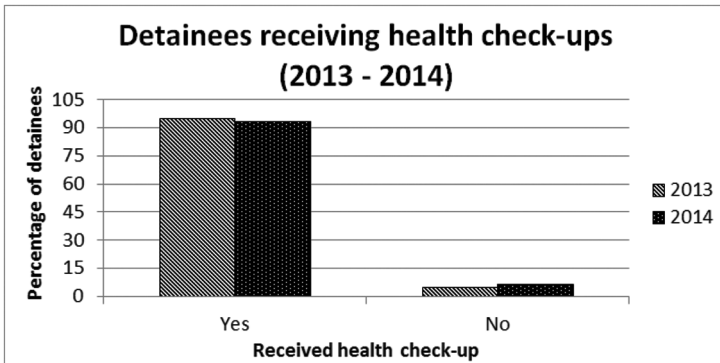


Figure 22: Proportion of detainees receiving health check-ups in 2013 and 2014

## 7. CONCLUSIONS

---

This report reveals that the trends and patterns of torture in Nepal over 2014 have largely been a case of more of the same. The overall rate of reported torture of 16.2% is the lowest since AF began collecting data in 2001 and forms part of a steady incremental downward trend in the proportion of detainees reporting torture or other inhuman treatment in detention. Despite these positive developments, however, serious problems remain.

Chapter 3A notes that a shift towards more psychological forms of torture appears to be occurring, with threats against the detainee or the detainee's family members increasingly being reported to AF lawyers. These changes in the methods of torture may lead to torture being underreported, either because the detainee does not perceive threats and psychological manipulation as a form of torture, or because of the difficulty inherent in proving that psychological torture has occurred.

Chapter 3B shows Banke, Kathmandu and Jhapa as the districts with the highest rates of reported torture in 2014. Kathmandu, in particular, has seen a significant increase in torture rates from 18.1% in 2013 to 26.7% in 2014. Conversely, reported torture in Morang and Rupandehi has dropped since 2013.

Data collected by AF in 2014 also reveal that those charged with theft report torture much more frequently than people detained on other charges. This is most likely due to the pressure on police to produce a culprit (by obtaining confessions) and recover the stolen property. This figure has increased since 2013 from 30.3% to 38.8%, despite the reported rates of torture for other charges remaining consistent.

As in previous years, Muslim detainees appear to be at particular risk of torture, with 29.8% reporting serious ill-treatment in detention. Rates of torture by caste have remained steady since 2013, with detainees belonging



to “low” castes continuing to report torture at a slightly higher rate than those belonging to “high” castes.

Chapter 4B highlights the particularly vulnerable position of juvenile detainees, with 24.1% of detainees aged 18 and under reporting torture, compared with 14.4% of adults. According to AF’s data, Baglung, Banke and Kathmandu torture juveniles at almost double the rate of adults. Again, these figures have not improved since 2013, when 23.1% of juveniles claimed they were subjected to torture in detention.

All this proves that finally putting the proposed Torture or Cruel, Inhuman or Degrading Treatment (Offence and Punishment) Bill tabled in Parliament in August 2014 into law has to be a priority. If enacted, it would strengthen legal protections for victims of torture and go a long way towards fulfilling Nepal’s international human rights obligations. However, AF calls upon parliamentarians to ensure the current weaknesses in the Bill which may undermine its ability to adequately provide justice to victims of torture will be rectified before the bill is passed. These problematic provisions include the short time limits for filing a complaint, the small penalty for those convicted of torture, a cap on the level of compensation available, penalties for those deemed to have filed false complaints and protections for officials acting in “good faith”. These provisions must be removed in order for the Bill to genuinely address the human rights of victims of torture and assist them in moving forward.

## ANNEX

---

### Annex – Data (2014) Torture and CIDT information.

		Frequency	Percent
Valid	Yes.	311	16.2
	No.	1605	83.8
	<b>Total</b>	<b>1916</b>	<b>100.0</b>

### Detainee Place. \* Torture and CIDT information.

		Torture and CIDT information.		Total
		Yes.	No.	
Kathmandu.	Count	81	222	303
	% within Detainee Place.	26.7%	73.3%	100.0%
Morang.	Count	16	192	208
	% within Detainee Place.	7.7%	92.3%	100.0%
Banke.	Count	89	184	273
	% within Detainee Place.	32.6%	67.4%	100.0%
Kaski.	Count	30	149	179
	% within Detainee Place.	16.8%	83.2%	100.0%
Kanchanpur.	Count	3	104	107
	% within Detainee Place.	2.8%	97.2%	100.0%

Udhayapur.*	Count	1	40	41
	% within Detainee Place.	2.4%	97.6%	100.0%
Rupandehi	Count	13	269	282
	% within Detainee Place.	4.6%	95.4%	100.0%
Danusha.*	Count	5	3	8
	% within Detainee Place.	62.5%	37.5%	100.0%
Baglung.*	Count	16	69	85
	% within Detainee Place.	18.8%	81.2%	100.0%
Myagdi.*	Count	2	20	22
	% within Detainee Place.	9.1%	90.9%	100.0%
Parbat.*	Count	9	31	40
	% within Detainee Place.	22.5%	77.5%	100.0%
Ramechhap.*	Count	1	41	42
	% within Detainee Place.	2.4%	97.6%	100.0%
Dolakha.*	Count	1	130	131
	% within Detainee Place.	0.8%	99.2%	100.0%
Jhapa.	Count	44	132	176
	% within Detainee Place.	25.0%	75.0%	100.0%
Siraha.*	Count	0	19	19
	% within Detainee Place.	0.0%	100.0%	100.0%
<b>Total</b>	<b>Count</b>	<b>311</b>	<b>1605</b>	<b>1916</b>
	<b>% within Detainee Place.</b>	<b>16.2%</b>	<b>83.8%</b>	<b>100.0%</b>

\* indicates data from this district was only collected for part of 2014 (e.g. January – June)

**Detainee Place. \* Torture and CIDT information  
(JANUARY – JUNE 2014)**

		Torture and CIDT information.		Total
		Yes.	No.	
Kathmandu.	Count	37	149	186
	% within Detainee Place.	19.9%	80.1%	100.0%
Morang.	Count	10	112	122
	% within Detainee Place.	8.2%	91.8%	100.0%
Banke.	Count	39	113	152
	% within Detainee Place.	25.7%	74.3%	100.0%
Kaski.	Count	16	89	105
	% within Detainee Place.	15.2%	84.8%	100.0%
Kanchanpur.	Count	3	54	57
	% within Detainee Place.	5.3%	94.7%	100.0%
Udhayapur.	Count	1	35	36
	% within Detainee Place.	2.8%	97.2%	100.0%
Rupandehi	Count	7	161	168
	% within Detainee Place.	4.2%	95.8%	100.0%
Baglung.	Count	13	57	70
	% within Detainee Place.	18.6%	81.4%	100.0%
Myagdi.	Count	1	13	14
	% within Detainee Place.	7.1%	92.9%	100.0%
Parbat.	Count	9	28	37
	% within Detainee Place.	24.3%	75.7%	100.0%
Ramechhap.	Count	0	30	30
	% within Detainee Place.	0.0%	100.0%	100.0%
Dolakha.	Count	1	130	131
	% within Detainee Place.	0.8%	99.2%	100.0%
Jhapa.	Count	25	68	93
	% within Detainee Place.	26.9%	73.1%	100.0%
<b>Total</b>	<b>Count</b>	<b>162</b>	<b>1039</b>	<b>1201</b>
	<b>% within Detainee Place.</b>	<b>13.5%</b>	<b>86.5%</b>	<b>100.0%</b>

**Charge. \* Torture and CIDT information.**

		Torture and CIDT information.		Total
		Yes.	No.	
Public Offences.	Count	81	387	468
	% within Charge.	17.3%	82.7%	100.0%
Attempted Murder.	Count	14	83	97
	% within Charge.	14.4%	85.6%	100.0%
No Charge.	Count	21	201	222
	% within Charge.	9.5%	90.5%	100.0%
Drug Offences.	Count	78	349	427
	% within Charge.	18.3%	81.7%	100.0%
Rape.	Count	19	93	112
	% within Charge.	17.0%	83.0%	100.0%
Arms and Ammunition.	Count	6	19	25
	% within Charge.	24.0%	76.0%	100.0%
Theft.	Count	71	112	183
	% within Charge.	38.8%	61.2%	100.0%
Murder.	Count	8	73	81
	% within Charge.	9.9%	90.1%	100.0%
Attempt to Rape.	Count	0	2	2
	% within Charge.	0.0%	100.0%	100.0%
Forest Offence.	Count	1	30	31
	% within Charge.	3.2%	96.8%	100.0%
Gambling.	Count	0	3	3
	% within Charge.	0.0%	100.0%	100.0%
Human Trafficking.	Count	3	38	41
	% within Charge.	7.3%	92.7%	100.0%
Forgery.	Count	1	41	42
	% within Charge.	2.4%	97.6%	100.0%

Traffic Murder.	Count	0	49	49
	% within Charge.	0.0%	100.0%	100.0%
Cheating.	Count	2	17	19
	% within Charge.	10.5%	89.5%	100.0%
Traffic Deformities.	Count	0	3	3
	% within Charge.	0.0%	100.0%	100.0%
Kidnapping.	Count	1	14	15
	% within Charge.	6.7%	93.3%	100.0%
Polygamy.	Count	1	65	66
	% within Charge.	1.5%	98.5%	100.0%
Deformities.	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Arson.	Count	0	8	8
	% within Charge.	0.0%	100.0%	100.0%
Black Market	Count	0	9	9
	% within Charge.	0.0%	100.0%	100.0%
Witch	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Explosive	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Cow Slaughtering	Count	2	0	2
	% within Charge.	100.0%	0.0%	100.0%
Unnatural Sex	Count	2	0	2
	% within Charge.	100.0%	0.0%	100.0%
Caste Discrimination	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Child Marriage	Count	0	5	5
	% within Charge.	0.0%	100.0%	100.0%
<b>Total</b>	<b>Count</b>	<b>311</b>	<b>1605</b>	<b>1916</b>
	<b>% within Charge.</b>	<b>16.2%</b>	<b>83.8%</b>	<b>100.0%</b>

**Caste**

	<b>Frequency</b>	<b>Percent</b>
Brahmin.	188	9.8
Chhetri.	518	27.0
Newar.	107	5.6
Indigenous.	436	22.8
Terai Ethnic.	263	13.7
Dalit.	223	11.6
Others.	134	7.0
Muslim	47	2.5
<b>Total</b>	<b>1916</b>	<b>100.0</b>

**Caste \* Torture and CIDT information.**

		<b>Torture and CIDT information.</b>		<b>Total</b>
		<b>Yes.</b>	<b>No.</b>	
Brahmin.	Count	25	163	188
	% within Cast	13.3%	86.7%	100.0%
Chhetri.	Count	73	445	518
	% within Cast	14.1%	85.9%	100.0%
Newar.	Count	15	92	107
	% within Cast	14.0%	86.0%	100.0%
Indigenous.	Count	72	364	436
	% within Cast	16.5%	83.5%	100.0%
Terai Ethnic.	Count	53	210	263
	% within Cast	20.2%	79.8%	100.0%
Dalit.	Count	40	183	223
	% within Cast	17.9%	82.1%	100.0%
Others.	Count	19	115	134
	% within Cast	14.2%	85.8%	100.0%

Muslim	Count	14	33	47
	% within Cast	29.8%	70.2%	100.0%
<b>Total</b>	<b>Count</b>	<b>311</b>	<b>1605</b>	<b>1916</b>
	<b>% within Cast</b>	<b>16.2%</b>	<b>83.8%</b>	<b>100.0%</b>

**Gender.**

		Frequency	Percent
Valid	Female.	239	12.5
	Male.	1676	87.5
	Other.	1	.1
	<b>Total</b>	<b>1916</b>	<b>100.0</b>

**Gender. \* Torture and CIDT information.**

		Torture and CIDT information.		Total
		Yes.	No.	
Female.	Count	11	228	239
	% within Gender.	4.6%	95.4%	100.0%
Male.	Count	300	1376	1676
	% within Gender.	17.9%	82.1%	100.0%
Other.	Count	0	1	1
	% within Gender.	0.0%	100.0%	100.0%
<b>Total</b>	<b>Count</b>	<b>311</b>	<b>1605</b>	<b>1916</b>
	<b>% within Gender.</b>	<b>16.2%</b>	<b>83.8%</b>	<b>100.0%</b>

**Reasons for arrest given.**

		Frequency	Percent
Valid	Yes.	196	10.2
	No.	242	12.6
	Given but after bringing in detention.	1478	77.1
	<b>Total</b>	<b>1916</b>	<b>100.0</b>



**Taken to the court?**

		Frequency	Percent
Valid	Yes	1695	88.5
	No	221	11.5
	<b>Total</b>	<b>1916</b>	<b>100.0</b>

**Were you brought before a judge/competent authority within 24 hours of detention?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	1164	60.8	68.7	68.7
	No	531	27.7	31.3	100.0
	<b>Total</b>	<b>1695</b>	<b>88.5</b>	<b>100.0</b>	
Not taken to court		221	11.5		
<b>Total</b>		<b>1916</b>	<b>100.0</b>		

**If brought before court/other judicial authority for remand did judge/judicial officer ask whether T/CIDT had occurred?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes.	311	16.2	18.4	18.4
	No.	1383	72.2	81.6	100.0
	<b>Total</b>	<b>1694</b>	<b>88.4</b>	<b>100.0</b>	
Not taken to court		222	11.6		
<b>Total</b>		<b>1916</b>	<b>100.0</b>		

**Did you have health check-up before keeping in detention?**

		Frequency	Percent
Valid	Yes.	1791	93.5
	No.	125	6.5
	<b>Total</b>	<b>1916</b>	<b>100.0</b>

**Government food provided?**

		Frequency	Percent
Valid	Yes.	1868	97.5
	No.	48	2.5
	<b>Total</b>	<b>1916</b>	<b>100.0</b>

**Contact with family members.**

		Frequency	Percent
Valid	Yes.	1550	80.9
	No.	366	19.1
	<b>Total</b>	<b>1916</b>	<b>100.0</b>

**CONFESSIONS – covers six districts only****Did you sign confession**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	666	49.3	97.9	97.9
	No	14	1.0	2.1	100.0
	<b>Total</b>	<b>680</b>	<b>50.3</b>	<b>100.0</b>	
	Not Signed	672	49.7		
<b>Total</b>		<b>1352</b>	<b>100.0</b>		

**Did you sign the confession of your own volition**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	490	36.2	73.6	73.6
	No	176	13.0	26.4	100.0
	<b>Total</b>	<b>666</b>	<b>49.3</b>	<b>100.0</b>	
	Not Signed (Incl. No charge)	686	50.7		
<b>Total</b>		<b>1352</b>	<b>100.0</b>		

**JUVENILES****Torture and CIDT information.**

		Frequency	Percent
Valid	Yes.	87	24.2
	No.	273	75.8
	<b>Total</b>	<b>360</b>	<b>100.0</b>

**Gender.**

		Frequency	Percent
Valid	Female.	23	6.4
	Male.	337	93.6
	<b>Total</b>	<b>360</b>	<b>100.0</b>

**Gender. \* Torture and CIDT information.**

			Torture and CIDT information.		Total
			Yes.	No.	
Gender.	Female.	Count	2	21	23
		% within Gender.	8.7%	91.3%	100.0%
	Male.	Count	85	252	337
		% within Gender.	25.2%	74.8%	100.0%
<b>Total</b>		<b>Count</b>	<b>87</b>	<b>273</b>	<b>360</b>
		<b>% within Gender.</b>	<b>24.2%</b>	<b>75.8%</b>	<b>100.0%</b>

**Caste**

		Frequency	Percent
Valid	Brahmin.	27	7.5
	Chhetri.	83	23.1
	Newar.	20	5.6
	Indigenous.	92	25.6
	Terai Ethnic.	53	14.7
	Dalit.	55	15.3
	Others.	20	5.6
	Muslim	10	2.8
	<b>Total</b>	<b>360</b>	<b>100.0</b>

**Caste \* Torture and CIDT information.**

			<b>Torture and CIDT information.</b>		<b>Total</b>	
			<b>Yes.</b>	<b>No.</b>		
<b>Caste</b>	Brahmin.	Count	4	23	27	
		% within Cast	14.8%	85.2%	100.0%	
	Chhetri.	Count	17	66	83	
		% within Cast	20.5%	79.5%	100.0%	
	Newar.	Count	6	14	20	
		% within Cast	30.0%	70.0%	100.0%	
	Indigenous.	Count	26	66	92	
		% within Cast	28.3%	71.7%	100.0%	
	Terai Ethnic.	Count	16	37	53	
		% within Cast	30.2%	69.8%	100.0%	
	Dalit.	Count	12	43	55	
		% within Cast	21.8%	78.2%	100.0%	
	Others.	Count	3	17	20	
		% within Cast	15.0%	85.0%	100.0%	
	Muslim	Count	3	7	10	
		% within Cast	30.0%	70.0%	100.0%	
	<b>Total</b>		<b>Count</b>	<b>87</b>	<b>273</b>	<b>360</b>
			<b>% within Cast</b>	<b>24.2%</b>	<b>75.8%</b>	<b>100.0%</b>

**Charge. \* Torture and CIDT information.**

		<b>Torture and CIDT information.</b>		<b>Total</b>
		<b>Yes.</b>	<b>No.</b>	
Public Offence.	Count	25	72	97
	% within Charge.	25.8%	74.2%	100.0%
Attempt to Murder.	Count	3	15	18
	% within Charge.	16.7%	83.3%	100.0%

No Charge.	Count	13	55	68
	% within Charge.	19.1%	80.9%	100.0%
Drug.	Count	8	51	59
	% within Charge.	13.6%	86.4%	100.0%
Rape.	Count	6	19	25
	% within Charge.	24.0%	76.0%	100.0%
Arms and Ammunition	Count	2	3	5
	% within Charge.	40.0%	60.0%	100.0%
Theft.	Count	28	37	65
	% within Charge.	43.1%	56.9%	100.0%
Murder.	Count	1	7	8
	% within Charge.	12.5%	87.5%	100.0%
Attempt to Rape.	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Forest Offence.	Count	0	3	3
	% within Charge.	0.0%	100.0%	100.0%
Human Trafficking.	Count	0	3	3
	% within Charge.	0.0%	100.0%	100.0%
Traffic Murder.	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Traffic Deformities.	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Polygamy.	Count	0	3	3
	% within Charge.	0.0%	100.0%	100.0%
Black Market	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Unnatural Sex	Count	1	0	1
	% within Charge.	100.0%	0.0%	100.0%
Child Marriage	Count	0	1	1
	% within Charge.	0.0%	100.0%	100.0%
Total	Count	87	273	360
	% within Charge.	24.2%	75.8%	100.0%

**Detainee Place. \* Torture and CIDT information.**

		Torture and CIDT information.		Total
		Yes.	No.	
Kathmandu.	Count	30	40	70
	% within Detainee Place.	42.9%	57.1%	100.0%
Morang.	Count	1	40	41
	% within Detainee Place.	2.4%	97.6%	100.0%
Banke.	Count	20	19	39
	% within Detainee Place.	51.3%	48.7%	100.0%
Kaski.	Count	14	48	62
	% within Detainee Place.	22.6%	77.4%	100.0%
Kanchanpur.	Count	1	10	11
	% within Detainee Place.	9.1%	90.9%	100.0%
Udhayapur.	Count	0	3	3
	% within Detainee Place.	0.0%	100.0%	100.0%
Rupandehi	Count	2	48	50
	% within Detainee Place.	4.0%	96.0%	100.0%
Danusha.	Count	2	1	3
	% within Detainee Place.	66.7%	33.3%	100.0%
Baglung.	Count	8	3	11
	% within Detainee Place.	72.7%	27.3%	100.0%
Myagdi.	Count	0	4	4
	% within Detainee Place.	0.0%	100.0%	100.0%
Parbat.	Count	0	3	3
	% within Detainee Place.	0.0%	100.0%	100.0%
Ramechhap.	Count	0	3	3
	% within Detainee Place.	0.0%	100.0%	100.0%
Dolakha.	Count	0	28	28
	% within Detainee Place.	0.0%	100.0%	100.0%
Jhapa.	Count	9	18	27
	% within Detainee Place.	33.3%	66.7%	100.0%

Siraha	Count	0	5	5
	% within Detainee Place.	0.0%	100.0%	100.0%
<b>Total</b>	<b>Count</b>	<b>87</b>	<b>273</b>	<b>360</b>
	<b>% within Detainee Place.</b>	<b>24.2%</b>	<b>75.8%</b>	<b>100.0%</b>

**Age. \* Torture and CIDT information.**

		Torture and CIDT information.		Total
		Yes.	No.	
10	Count	0	1	1
	% within Age.	0.0%	100.0%	100.0%
11	Count	0	1	1
	% within Age.	0.0%	100.0%	100.0%
12	Count	0	5	5
	% within Age.	0.0%	100.0%	100.0%
13	Count	6	10	16
	% within Age.	37.5%	62.5%	100.0%
14	Count	5	17	22
	% within Age.	22.7%	77.3%	100.0%
15	Count	13	38	51
	% within Age.	25.5%	74.5%	100.0%
16	Count	19	31	50
	% within Age.	38.0%	62.0%	100.0%
17	Count	19	80	99
	% within Age.	19.2%	80.8%	100.0%
18	Count	25	90	115
	% within Age.	21.7%	78.3%	100.0%
<b>Total</b>	<b>Count</b>	<b>87</b>	<b>273</b>	<b>360</b>
	<b>% within Age.</b>	<b>24.2%</b>	<b>75.8%</b>	<b>100.0%</b>



**Reasons for arrest given.**

		Frequency	Percent
Valid	Yes.	29	8.1
	No.	69	19.2
	Given but after bringing in detention.	262	72.8
	<b>Total</b>	<b>360</b>	<b>100.0</b>

**Were you brought before a judge/competent authority within 24 hours of detention?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	177	49.2	60.6	60.6
	No	115	31.9	39.4	100.0
	<b>Total</b>	<b>292</b>	<b>81.1</b>	<b>100.0</b>	
Not taken to court		68	18.9		
<b>Total</b>		<b>360</b>	<b>100.0</b>		

**If brought before court/other judicial authority for remand did judge/judicial officer ask whether T/CIDT had occurred?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes.	45	12.5	15.4	15.4
	No.	247	68.6	84.6	100.0
	<b>Total</b>	<b>292</b>	<b>81.1</b>	<b>100.0</b>	
Not taken to court		68	18.9		
<b>Total</b>		<b>360</b>	<b>100.0</b>		

**Did you have health check-up before keeping in detention?**

		<b>Frequency</b>	<b>Percent</b>
Valid	Yes.	325	90.3
	No.	35	9.7
	<b>Total</b>	<b>360</b>	<b>100.0</b>

**Government food provided?**

		<b>Frequency</b>	<b>Percent</b>
Valid	Yes.	340	94.4
	No.	20	5.6
	<b>Total</b>	<b>360</b>	<b>100.0</b>

**Contact with family members.**

		<b>Frequency</b>	<b>Percent</b>
Valid	Yes.	265	73.6
	No.	95	26.4
	<b>Total</b>	<b>360</b>	<b>100.0</b>

