

# CONTINUING TORTURE DURING 2015



June 26, 2016

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Advocacy Forum - Nepal

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# ABBREVIATIONS

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AF	Advocacy Forum
AHRC	Asian Human Rights Commission
CAT	Convention/Committee Against Torture
CRA	Civil Rights Act 1955
CRC	Convention on the Rights of the Child
CRT	Compensation Relating to Torture Act 1996
DPO	District Police Office
DSP	Deputy Superintendent of Police
HRC	Human Rights Council of the UN
GoN	Government of Nepal
IC	Interim Constitution (2007)
ICCPR	International Covenant on Civil and Political Rights
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
NAPHR	National Action Plan for Human Rights
NHRC	National Human Rights Commission
NP	Nepal Police
SP	Superintendent of Police
UPR	Universal Periodic Review

# FOREWORD

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Advocacy Forum wishes to acknowledge and express its sincere thanks to all the individuals who were involved, both directly and indirectly, in the preparation of this report. They are numerous to be named here, but their inputs were vital.

In particular, we would like to extend our gratitude to Alexander Jackman, Bikash Basnet and Ingrid Massage who compiled the relevant documents, and drafted the report and edited it.

Above all, we are deeply indebted to the victims, their families, and the major stakeholders of criminal justice system in Nepal. We also thank to the police officers who have allowed AF lawyers to visit detainees. We hope that this report will prove beneficial to raise oft-neglected issues surrounding the discourse of torture in the country.

Finally, we greatly appreciate the untiring efforts of the lawyers at Advocacy Forum who visit detention centres on a regular basis and document the agonies and pains suffered by the victims.

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## EXECUTIVE SUMMARY

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During 2015, the situation for torture victims in Nepal remained bleak, while perpetrators continued to be shielded from accountability. 17.2% of 1,212 detainees in places of detention run by the Nepal Police (NP) in ten districts interviewed by Advocacy Forum (AF) reported torture, as compared to 16.2% out of 1,916 in 15 districts during 2014. This trend contrasts with the Government of Nepal's (GoN) promises during the Universal Periodic Review in November 2015 to address torture by criminalising it and to impartially investigate acts of torture, and provide victims the right to reparation.

### **Key findings of this year include**

- Juvenile torture remains more prevalent than adult torture
- Torture rates remain high in some districts, particularly Banke, Kathmandu and Jhapa, while Rupandehi District has seen a significant increase in torture rates from 2014
- The vast majority of detainees are given health checks prior to detention as required in law, but there remain concerns about how these check-ups are conducted
- More detainees are not informed about the reason for their arrest before they are detained, contrary to the law.

The scope of AF's monitoring, evaluated as highly cost-effective and effective in improving the treatment of detainees, had to be reduced in 2015 owing to reduced funding. However, the organisation still interviewed 1,212 detainees in ten districts, which has allowed it to continue to conduct statistically significant comparisons with findings of previous years.

### **Torture methods: physical and psychological coercion for confessions**

Torture methods included beating with fists, *lathis* (bamboo sticks), wooden sticks and plastic pipes and kicking with boots. Torture using water (including “water boarding”) was reported. Detainees also reported being threatened with death, coerced into providing confessions, and threatened with further torture if they reported torture to judges, medical staff or human rights defenders.

### **Numerous staff and facilities implies complicity**

Detainees reported ill-treatment and torture in transit to detention centres, at local police offices, and at district police offices. In some cases, detainees reported up to 7 or 8 officers witnessing or participating in torture. Others suggested that local police chiefs or mid-ranking officers were involved in or knew of torture. This scale of torture suggests that its occurrence is common and tolerated or even inflicted by officers in positions of command.

### **Torture of juveniles remains higher than torture of adults**

Of particular concern is the continued torture of juveniles; juvenile detainees reported torture in 21.8% of cases, considerably higher than the overall rate and the rate among adult detainees (15.9%). Juveniles were also less likely to be informed of the reason for their arrest. Around a quarter of all torture reported was reported by males aged 18 or under.

### **Torture varies between districts**

The highest rate of torture was in Jhapa for six months of data (34%). Yearly rates remained high in Banke (25.8%), Kathmandu (24.3%) and Kaski (20%). By contrast, no torture was reported in the few visits to detention facilities in Baglung and Myagdi. One instance was recorded in Kanchanpur and Parbat. Though low, torture increased in Rupandehi from 4.6% to 10.9%.

### **Torture of homicide suspects increased**

The use of torture on murder suspects has increased dramatically from 10% in 2014 to 40% in 2015 – the report details some relevant cases.

### **Compliance with safeguards – some improvement, some regression**

Only 4.1% of detainees were provided with a reason for arrest at the time of arrest. More detainees than ever received health check-ups upon detention, though case studies also highlighted the need for access to treatment and medical examinations during and after detention when torture was inflicted.

### **Legal landscape unchanged**

The legal landscape around torture in Nepal remains static; neither the Anti-Torture bill, nor the new penal code which both criminalise torture have been passed into law. The Compensation Relating To Torture Act remains the only legislation directly addressing torture, and fails to criminalise torture while (as AF has noted previously) containing other provisions (such as a 35-day limit on complaints) which make it seriously flawed.

AF's analysis of data collected from the detainees suggests that torture and failure to comply with few existing safeguards remain systematic. At the UPR, the GoN noted that “[b]ringing desired changes in behaviour, practice and attitude of socially and culturally interwoven mind-set is a long-term process.” While this is correct, reforming organisational culture can be achieved in part by reforming organisational structure, and providing measures to reduce impunity. As such, the failure to criminalise torture remains a critical impediment to reform. The low frequency of departmental action against police officers found involved in torture demonstrates that impunity for torture is systemic, while the involvement of multiple officers and mid- to high-ranking officers in some cases suggests a culture of torture persists in the Nepal Police.

### **Recommendations**

AF makes the following recommendations to reduce and eliminate torture in Nepal;

- To combat impunity, ensure redress for victims of torture and provide a deterrent, **torture must be criminalised** and penalties established which are appropriate to the gravity of the crime. The Bill preventing torture and the proposed Penal Code changes should be amended in line with AF's prior recommendations, should be prioritised rather than delayed, and must be compliant with Nepal's international obligations.

- To ensure oversight of police behaviour in the absence of systematic monitoring, and to prevent coercion and torture, **all detainees should be given their constitutional right to access a legal representative**, who should be present during interrogation and should be able to witness and review a detainee's statement.
- To guarantee detainees' health and support the monitoring of torture, medical treatment should be explicitly made available to detainees upon request at any point in detention. **Check-ups should be held privately and confidentially**, and doctors should have the ability to confidentially inform a judge if torture is suspected.
- To build faith in the legal system and reduce impunity, **decisions of the courts with regard to compensation should be implemented**, and compensation should be readily available to victims. In line with UPR member recommendations and the NAPHR a central fund for torture compensation should be established to ensure compensation is available for victims.
- To protect juvenile detainees, **juvenile facilities must be made available** and the practice of holding juveniles with adults must be prohibited in law and in practice.
- To ensure accountability and a strong framework against torture, **Nepal should implement its international obligations**, ratify OPCAT as recommended by multiple UPR parties and the NHRAP and ensure the NHCR is well-resourced and independent.

# PART 1 - INTRODUCTION

---

Advocacy Forum (AF) is a leading human rights and advocacy organisation in Nepal. AF's staffs have been visiting detention centres since 2001, collecting information on the torture and treatment of detainees, supporting detainees, and working to end the practice of torture and the culture of impunity in Nepal. On the annual International Day in Support of Victims of Torture, AF releases a report on torture in the preceding year.

The overall aims of this year's report are to understand the dimensions of torture in Nepal, to trace patterns of torture from 2014 to 2015, and to do so by relying on the fieldwork and primary data collected by AF lawyers to provide an evidence-based summary and analysis of torture in Nepal for 2015. The report uses data from 1,212 interviews with detainees across ten districts. The report initially discusses trends in torture by district, charge, age, caste and gender, and analyses differences between those trends in 2014 and 2015. Then, it examines juvenile detainees as an overrepresented and vulnerable group among torture victims, before focusing on compliance with procedural safeguards and detainees' rights,

A number of case studies demonstrating torture and the experiences of victims drawn from AF's interviews with detainees illustrate the routine use of torture, the diversity in methods used, and the injuries and impact on victims.

Lastly, the report provides an update/overview on the legal landscape relevant to torture in Nepal and the outcomes of Nepal's second UPR in 2015. It also briefly discusses the provisions of the 2015 Constitution, and the proposed new Penal Code and Criminal Procedure Code.



## METHODOLOGY

### *Monitoring and Reporting*

In 2015 AF lawyers visited detention centres in ten districts of Nepal, interviewing 1,212 detainees. The six districts for which full-year data was available are Kathmandu, Banke, Kanchanpur, Rupandehi, Morang and Kaski. There was some data collected over 6 months from Myagdi, Parbat, Jhapa and Baglung. AF also monitored some cases in other districts, including two used as case studies here, but these were included in the dataset according to the AF district office carrying out monitoring.

AF lawyers use a standard questionnaire, which collects personal details, details of arrest, details of alleged torture, and information on the rights afforded to the detainees by the relevant authorities. This allows AF to build a picture of trends and patterns in torture.

The definition of torture in this report, and that used by AF, is that of Article 1 of the Convention Against Torture (CAT);

“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>1</sup>

As such, the report considers that torture encompasses violence used to extract confession, treatment designed to inflict pain on detainees, and threats of torture or other violence for non-compliance with the demands of the perpetrator. This report focuses on the activities of the Nepal Police (NP); AF visits police offices to access detainees, though in past years the Army<sup>2</sup>, APF<sup>3</sup> and forestry officers<sup>4</sup> have been highlighted as practising torture.

<sup>1</sup> UN Convention Against Torture, Art. 1.

<sup>2</sup> Advocacy Forum (2011), Torture Briefing – Prevention of Torture in Nepal: January to June 2011, p. 6.

<sup>3</sup> Advocacy Forum (2009), Criminalise Torture, p. 7.

<sup>4</sup> Advocacy Forum (2012), Torture Briefing – January to June 2012, p. 5.

The ability of AF to undertake regular monitoring of places of detention in reporting was reduced this year. This was a result of limited funds being available to the organisation. AF regrets that it has not been in a position to undertake monitoring in the 20 districts where it used to have a program for several years. It hopes to be able to re-establish this important work during 2016.

AF follows best practice during interviewing and processing of the information obtained. It ensures full confidentiality, and seeks formal consent from the detainees and/or their relatives (in the case of juveniles). Consent for case study use was sought as part of the questionnaire. All detainees in the case studies provided consent for the use and public release of the details of the cases.

Data collected through the questionnaires are processed using the SPSS software. This same process has been used for many years, allowing the comparative analysis demonstrated in this report.

### ***Case Studies***

While AF's data describes broad trends in torture according to a variety of demographic and locational factors, case studies are included in this report to demonstrate in greater detail how torture works in Nepal. Cases were chosen on several grounds;

- i. They were demonstrative of noteworthy trends in the data, in particular the torture of murder suspects and the torture of juveniles,
- ii. They were demonstrative of severe torture methods that continue to prevail,
- iii. They were demonstrative of routine/systemic application of torture, involvement of multiple or senior officers, or use of multiple police facilities,
- iv. They were demonstrative of failure to comply with legal standards.

Case studies included the most common methods and experiences of torture. In particular, many detainees in the case studies reported being beaten on the soles of the feet with a plastic pipe, being slapped or beaten, kicked with

boots, being coerced into confessions, silenced with the threat of further torture, and not being allowed to check their statements.

In three cases, the alleged torture took place in 2014. In two of those cases, the person only met AF lawyers in January 2015. These cases were therefore considered as part of the 2015 dataset. The main purpose of restricting cases to 2015 is to prevent overlap with past and future reporting. 2015 straddled the years 2071 and 2072 BS. As such, the year of occurrence is less important than the exclusivity of cases to the 2015 dataset.

The names of detainees were replaced with arbitrary initials to ensure detainee safety and confidentiality. Other identifying details were also removed, though locations of torture were retained to provide some context and accountability, and details of torture were retained as essential to illustrating the realities of torture in Nepal.

### ***Survey data***

Chi-squared testing was used to compare frequency of torture between 2014 and 2015 for variables including location and caste, and to compare between subcategories within each variable (for example, between districts). The test was used because the Chi-square test does not presume a normal distribution of data<sup>5</sup>, and because the quantitative data available was the observed frequencies for categorical variables.

The data sets in some situations were too small to yield accurate comparison via Chi-squared, which requires at least 80% of expected values to be  $>5$ .<sup>6</sup> These tests were corroborated with Fisher Exact tests, which can handle small sample sizes. The Fisher Exact test is similar to Chi-squared, but returns a precise P-value at any frequency for a 2x2 contingency table. No Chi-squared results contradicted the Fisher's Exact test results.

It is important to note that Chi-squared does not indicate causation, but merely tests for the independence of two populations.<sup>7</sup> Where Chi-squared indicated that populations were independent it was taken to mean that there

<sup>5</sup> Agresti, A. (2007), *Categorical Data Analysis*. London: Wiley, p. 35.

<sup>6</sup> *Ibid.*, p. 35.

<sup>7</sup> *Ibid.*, p. 40.

was a statistically-significant difference between the two data sets equivalent to a change between 2014 and 2015 data.

In graphs, error bars were used to represent 95% confidence intervals of each data point. This is important to indicate whether differences between years and bars are actually significant. Error bars that mainly overlap indicate less significant differences, while those that do not overlap suggest significant change has occurred. Each section of analysis identifies trends statistically significant at the 0.05 confidence level. Trends that fell between 0.1 and 0.05 are mentioned tentatively.



## **PART 2 - TRENDS AND PATTERNS OF TORTURE**

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The use of torture in places of detention regularly visited by AF lawyers was as common during 2015 as it was in 2014: 17.2% of 1,212 detainees interviewed by AF in 2015 reported torture, around 1 in 6. This compares to 16.2% of detainees in 2014.

In 2015, officers inflicted torture on detainees for the deliberate purpose of eliciting confessions, and used the threat and practice of torture to intimidate victims into compliance and silence. Torture was often inflicted at the point of arrest, in transit to police offices, at local police offices and in district or metropolitan police offices. In some cases, 7 or more officers participated in or witnessed torture; in others, officers ranked as high as Superintendent of Police (SP) were alleged to have witnessed or participated in torture.

In some cases, the rights of detainees were not respected. Some detainees were held for days before being taken to court for a remand hearing or even before an arrest warrant was produced; the majority of detainees reported only being informed of their charge after being detained. While medical check-ups were almost universally provided, detainees were often taken immediately after arrest and prior to torture; doctors in some cases failed to ask about torture or focused on alcohol consumption. When check-ups were conducted after torture some were also limited, or the victim was too intimidated to report their injuries, or felt at risk of torture if they revealed their injuries.

Many detainees reported signing papers without full knowledge of what the papers contained; some chose to sign confessions out of fear or experience of torture, others were not read or provided with a copy of their statement.

One man was made to sign papers declaring injuries received from torture to be accidental.

The variety of detainees' backgrounds, the high rates of torture across different districts, and the involvement of numerous police staff and facilities in torture suggest that torture remains a common phenomenon in Nepal.

## **METHODS OF TORTURE**

Torture methods remained constant. Physical violence is usual and generally consists of beating, with bamboo sticks (*lathis*), plastic pipes, fists and kicking with boots. Beating on the soles of the feet with pipes was common to many cases, while kicking the legs and punching or slapping the face is also common.

Additional methods of physical torture included hair-pulling and torture using water. In the latter, detainees report being restrained, either lying down or suspended between objects, then having water poured into their nose and mouth.

Psychological torture and threats were also reported. Some detainees were threatened with disappearance or death if they did not confess. In one case, an interviewee was told that other detainees had been killed in custody. Many interviewees were threatened with further torture if they reported torture to medical staff or human rights bodies.

Interviewees reported injuries ranging from cuts and bruising to broken bones and difficulty walking. In some cases, police had detainees roll pipes or bamboo on limbs or jump “like a frog” after torture. This was purportedly to reduce bruising and minimise physical evidence of torture.

### ***Case Study – Torture Methods: Water Boarding***

**EB was detained at Banke DPO, and interrogated for four days. He was slapped, blindfolded then beaten on the soles of the feet with a plastic pipe, leaving him unable to walk for four days. The detainee reported a police officer saying that the detainee “would not tell the truth without ‘treating’ him well. EB said: ...they took me every day to the**

**inquiry room and slapped me when I refused to confess the crime.”**

**At one point, EB was tortured with water. Seven or eight policemen were present. In his words: “They handcuffed my hands and legs with handcuffs, inserted a big stick through my handcuffed hands and legs, lifted me up from the two ends of the stick and hung me between two cots. Some of them had caught my hands and legs. Then some of them poured water into my nose and mouth...I was suffocating and suffering from severe pain. While pouring water into my nose and mouth they were demanding to tell them how I had committed the crime and threatened to kill me then and there if I refused to confess. When I tried to move my head due to pain and suffocation, they slapped me on my cheeks and held my head. They tortured me in that manner for about half an hour and due to severe pain, I was forced to confess. Then only they stopped inflicting torture on me.”**



**EB was illegally detained for seven days. Out of fear, he felt unable to request medical treatment. An arrest warrant and a detention letter were not obtained until seven days later. When presented before a judge, he did not mention torture when asked because the police threatened him with further torture. His statement to the Public Prosecutor’s Office was not read to him nor was he allowed to read it. EB is now pursuing action against the perpetrators.**

## **DATA**

The increase in reports of torture from 16.2% to 17.2% between 2014 and 2015 is not statistically significant. But this is no consolation for the victims, and no excuse for the unabated prevalence of torture. AF’s data suggests that the prevalence and reporting of torture initially substantially decreased after the end of the armed conflict in 2006, but has not altered much over the last few years. This finding is unsurprising given the static legal situation and continued failure to criminalise torture.



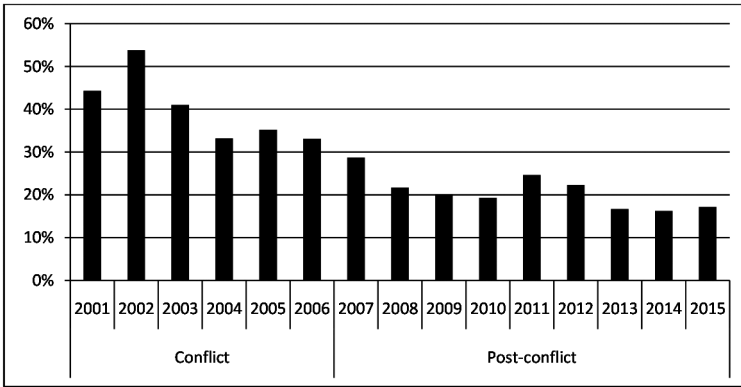


Figure 1: Rates of torture by year, 2001-2015

Rates still vary significantly; the experiences of 2011/12, when torture increased, show that torture rates are still shifting.

### By District<sup>8</sup>

On a district-by-district basis, trends have also remained similar. AF data this year covered ten districts, six of which had data for the entire year, while four only had data for a number of months.<sup>9</sup>

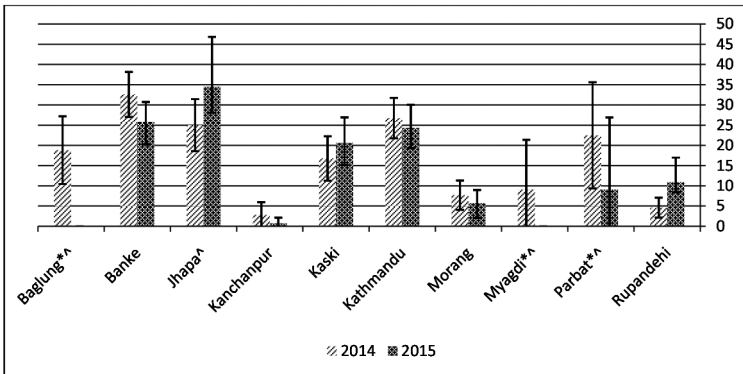


Figure 2: Rates of torture by district, 2014-2015

<sup>8</sup> See Annex 1b for data.

<sup>9</sup> Six months' data in Jhapa, Baglung, Parbat and Myagdi. Full-year data: Kathmandu, Banke, Kaski, Morang, Kanchanpur, Rupandehi.

The highest rate of torture was in Jhapa (34%). Rates remained high in Banke (25.8%), Kathmandu (24.3%) and Kaski (20%). The remaining districts of Rupandehi and Morang had rates of 10.9% and 5.7% respectively. Torture was uncommon in some districts; no torture was reported in the few visits to Baglung and Myagdi, while one instance each was recorded in Kanchanpur and Parbat.

While it would be useful to examine whether torture in the Terai –highlighted by AF’s special report in 2010<sup>10</sup>, and AHRC’s report in 2016<sup>11</sup> – has changed in the context of the protests against the new Constitution in the second half of 2015, the data covers too few districts to allow representative comparison between Terai and non-Terai districts.

Rupandehi and Baglung were the only individual districts which displayed significant changes in the prevalence of torture. Torture increased in Rupandehi and decreased in Baglung, where sample size was very small. AF interviewed 101 detainees in Rupandehi, of whom 11 reported torture, compared to 13 of 296 in 2014. As such, the reported rate of torture jumped from 4.6 to 10.9% -- but remained below average.

Torture in Jhapa was reported in 20 out of 58 cases, making it the highest rate of torture of any district surveyed. Only 6 months of data was available for Jhapa, which had a rate of 25% in 2014. This increase was not significant, however, at the 0.05 confidence level ( $p=0.16$ ), likely owing to the smaller sample size this year.

In Banke, rates of torture remained among the highest of the districts visited. In 2014, a third (32.6%) of detainees interviewed reported torture, a figure that has decreased to 25% in 2015. The changes in Banke were significant only at a 90% level of confidence, ( $p=0.07$ ). Its rate of torture remains the highest of all districts for which full-year data was available.

<sup>10</sup> Advocacy Forum (2010), Torture and Extrajudicial Executions amid widespread violence in the Terai.

<sup>11</sup> AHRC (2016), Protest and Repression in Terai.

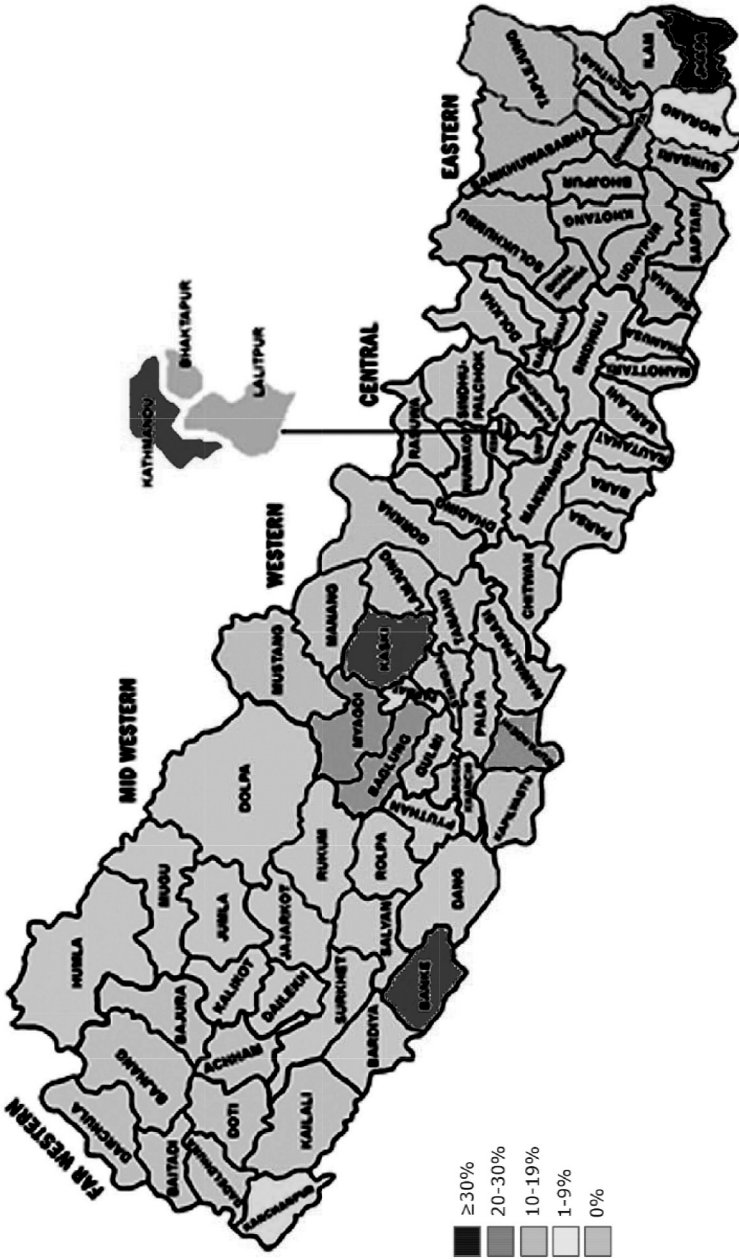


Figure 3: Map of districts included in report, with reported rates of torture

## ***Case Study – Torture in Banke: Multiple Reports of Torture Relating to a Single Murder Case***

AF interviewed ten suspects arrested and tortured by police in relation to a case of Nepalgunj. Most of the torture occurred in two locations: the Banke District Police Office (DPO), and the Police Office in Jamunaha. This box draws together the reports of each detainee, and demonstrates the wide use of torture.



JK, RP and CS were arrested in Rupandehi. They were taken to Banke DPO, where an unnamed “chief of police” beat JK with a plastic pipe and CS was punched and beaten with bamboo stick by 4 or 5 officers.

JK was moved in turn to the area police offices at Jamunaha and Jayaspur. Other detainees also reported being moved to Jamunaha. RP reported that two plainclothes officers and a police inspector beat the detainees separately. CS also reported that 7 or 8 officers in civilian clothes beat him with a *lathi* to force a confession, causing pain for around 5 days. At Jayaspur, JK and two other suspects were beaten by three police officers. JK was finally detained at Banke DPO.

JK and RP were told that if they reported torture, they would be tortured again. JK’s statement was coerced, and he was not allowed to read it. RP alleged that the police wrote his statement. He said they threatened to “detain [you for] 15 more days and torture you if you give a different statement before public prosecutor or tell human right activists about the torture.”



Several suspects in this case also reported water torture. DM and ES were arrested separately and taken to Banke DPO.

DM was blindfolded and then water boarded. He said, “After blindfolding me, they ordered me to lie on my back on a bench,

covered my face with cloth and poured water on my mouth and nose for about 10 minutes during interrogation”. Afterwards, a police chief kicked him in the legs several times. He was threatened with further torture for reporting torture or deviating from the police’s version of events in statements to the Public Prosecutor or human rights activists. Again, DM did not wish to pursue the matter out of fear of the police.

ES was handcuffed, blindfolded and made to lie on the floor. His feet were tied, a cloth was applied to his face, and water was poured into his nose for around 25 minutes. ES fell unconscious during the torture. At least 3 officers were present during the torture. He later confessed to involvement in the murder out of fear of torture.



One detainee reported that a high-ranking officer was involved in his torture. AR was arrested in Nepalgunj. He was taken to Banke DPO. AR reported that the insignia of the officer who initially tortured him was a pair of crossed kukris and two stars – denoting a Superintendent of Police (SP). The officer elevated AR’s legs and beat the soles of his feet with a stick. He then kicked AR once in the ribs, and punched his back 4 -5 times.

Subsequently, the officer called in three more officers, one with the stick, one with an aluminium stick and the third with a *lathi*. For around 4 hours they beat the soles of his feet, his back, and his hands. This left AR with pain in his feet, bruising on his back, and damaged skin on his arm. He was forced to apply for medical treatment through a lawyer. Again, he did not wish to file a complaint out of fear of the police.



Several fathers of the men involved had applied to AF for assistance. AF was able to advise the detainees that they should ask, during remand proceedings, for a medical examination. Thus, during remand proceedings, the detainees applied for a medical examination and

claimed they had been tortured. The district court subsequently ordered examinations within two days.

These cases demonstrate the consistent application of torture to different suspects in this case, and the use of torture to extract confession. Additionally, various suspects were held and tortured together, suggesting the practice was a deliberate attempt to extract confessions from the suspects. The use of a number of facilities and the involvement of multiple staff and detainees further underscores the systemic use of torture.

### *By Caste/Ethnicity<sup>12</sup>*

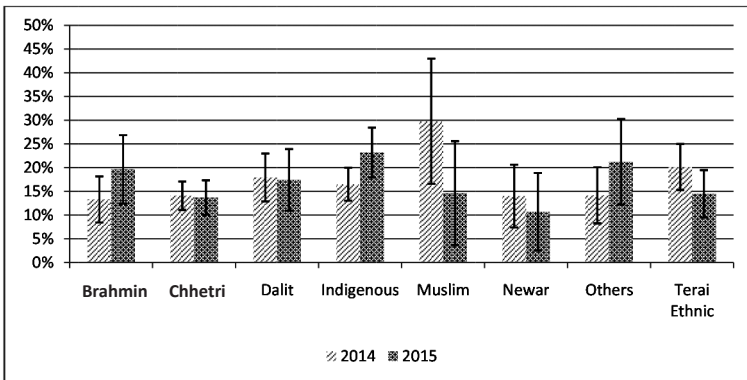


Figure 4: Detainees reporting torture, by caste/group

Comparing the representation of difference groups among those interviewed and those tortured appears to demonstrate that there was a greater or lesser representation of some castes among those tortured. Detainees identified as indigenous are more likely to be tortured than people from other groups or castes. While they represent only 20.6% of the overall detainee population interviewed by AF, they constitute 27.9% of those reporting torture.

<sup>12</sup> See Annex 1d and 1e for data.

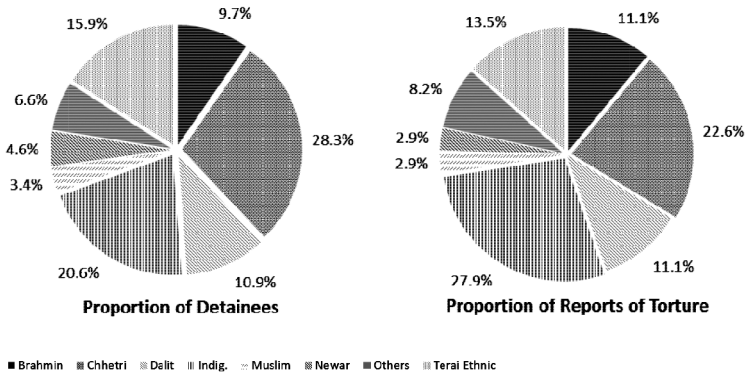


Figure 5: Comparison of proportion of detainees with proportion of torture reports by caste/ethnicity

### By Charge<sup>13</sup>

Trends of torture by charge remain predominantly unchanged from 2014. However, the use of torture on murder suspects has increased dramatically from 10% in 2014 to 40% in 2015. Four categories accounted for 68% of charges and 75.5% of torture reported to AF. These were drug offences (297 arrests, 19% tortured), public offences (255, 15%), theft (156, 30%) and no charge (119, 10.9%).

Those charged with murder (41%), theft (30%) and drug offences (19%) reported some of the highest rates of torture. AF interviewed 119 people detained without charge, of which 13 reported torture. This figure has not changed significantly from 2014, having risen negligibly from 9 to 10.9% in 2015.

Five out of seven detained on kidnapping charges reported torture, though the limited number makes it difficult to draw conclusions. The high rate of torture of detainees charged with theft, which was a key finding of last year’s report, decreased (but only at a 0.1 confidence level) from 39% in 2014. It remains very high at 30%.

<sup>13</sup> See Annex 1c for data.

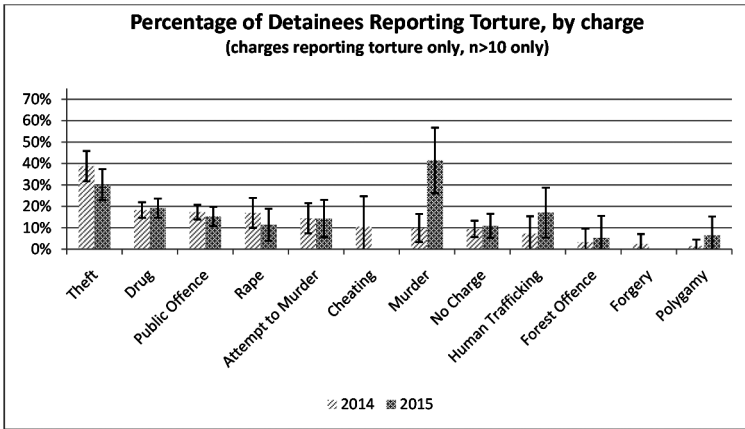


Figure 6: Percentage of Detainees Reporting Torture, by charge (charges reporting torture only, n>10 only)

### ***Case Study - Severe Torture and Prolonged Illegal Detention of Homicide Suspects in Kathmandu District***

The related cases of FP and GR demonstrate prolonged detention including moving detainees between locations and misleading family members as to detainees' whereabouts; failure to bring detainees before authority in 24 hours; the use of torture to coerce suspects into confessions; severe physical torture of suspects; and threats of execution as psychological torture. In addition to the cases above, they also demonstrate consistent severe torture of murder suspects.

FP was detained in Kathmandu. By his account he was detained illegally for at least three days. During this time he was tortured and coerced into providing a statement.

He was initially kicked and struck with hands while being transported to the police station. There, police beat him on his back, legs and the soles of his feet with wooden and plastic sticks. One officer stood on his abdomen (he was recovering from appendix surgery).



FP was put back in a vehicle, and the police drove him around Kathmandu trying to identify where other suspects lived. His face was covered, and he was forced to hide inside the vehicle. As he was unable to find his friends during the trip in the vehicle, some officers suggested taking him to Banasthali Police Office for further torture, while another one said that he should be killed and thrown under a bridge in Balaju, saying that nobody would know who killed him.

Instead, he was taken to the Metropolitan Police Crime Branch. The next day he was beaten during interrogation with a plastic pipe on the soles of his feet, then with a bamboo stick on his hands, rear, back and thighs. Again he was threatened with execution if he did not give a particular statement. During the interrogation, FP received a phone call from his mother, and was instructed to say he was in Bhaktapur. His family were therefore unaware of his whereabouts. He was detained for three days, during which he was kicked and punched. At one point, torture was inflicted in a room with a CCTV camera, which the police covered during the beating.

FP reported numerous injuries from his torture; his ears were injured, he was unable to eat and sleep, and his abdomen, recovering from appendix surgery, became painful and swollen. After complaining about this, he was taken to hospital for treatment.

GR reported similar torture on the way to and within the Metropolitan Police Station at Dharmasthali. At the station, his legs were suspended on a stick and the soles of his feet were beaten. He too was taken to the Metropolitan Crime Branch, where officers again suspended his legs from a pole and beat him. A CCTV camera was covered prior to the torture, while one officer blindfolded GR before beating him. He was warned that another detainee had been beaten to death, and an officer showed him a mark on the wall of the room, where another detainee had supposedly been killed. GR stated that on another occasion, an officer “pointed a pistol at my neck and threatened to kill me and throw me away. They said they will say that I was killed in an encounter [armed confrontation]”. GR refused to agree with statements put to him by the police. The police made him jump “after

torture” in an apparent attempt to minimise bruising – however, he reported severe bruising on his feet and cuts to his legs, as well as fever, as the effects of torture.

At his medical examination, GR was only asked if he had consumed alcohol. Despite requesting medication for pain he did not receive any. The police threatened that if he reported his torture to the doctor, he would be tortured again. After spending another night at Hanuman Dhoka, he was transferred to Maharajgunj Police Station. There, a statement was taken which he signed but was not allowed to read. He was unaware of his right to file a case for compensation.

The accounts of GR and FP demonstrate how police are able to manipulate their access to basic rights including healthcare and contact with family, and to coerce detainees into confessions. The use of multiple police facilities is also concerning, and suggests either systemic complicity or poor oversight.

### ***By Gender<sup>14</sup>***

There was no change in patterns of reported torture across female and male detainees. Female detainees reported far lower rates of torture (~4%) than men (18%). However, it is possible that female detainees experience torture differently from male, and that forms of torture could vary. As AF’s 2011 report on the torture of women in detention<sup>15</sup> notes, female detainees are often tortured by women officers<sup>16</sup>, and may be at particular risk of particular kinds of torture – rape, beating on sensitive parts, forced undressing, and threats to put nettle leaves in the vagina were identified in the 2011 report.<sup>17</sup>

AF also noted that women are less likely in general to pursue formal avenues of reparation due to cost, perception of bias, the sensitivity of the issue,

<sup>14</sup> See Annex 1f and 1g for data.

<sup>15</sup> Advocacy Forum (2011), *Torture of Women In Detention*.

<sup>16</sup> *Ibid.*, p. 1.

<sup>17</sup> *Ibid.*, p .10.

shame and societal stigma in the case of sexual violence, and the lack of female officers.<sup>18</sup>

While many of the issues around torture prevention are common to male and female detainees, there is also a need to ensure international obligations and standards around the treatment of female detainees are fulfilled.

### ***Case Study - Female detainee accused of trafficking in Banke District***

**TT is a dance teacher from Banke District. She was arrested on suspicion of human trafficking in Bardiya, and handed over to the police office in Mainapokhari. There, she was slapped by a woman police officer and accused of being a “broker”. A Deputy Superintendent of Police (DSP) then allegedly slapped her, threw her against the iron bars of the detention room, and repeatedly elbowed her in the ribs. The DSP ordered a female officer to beat TT with a stick; the officer used her hands to beat TT on the face and legs. In a phone conversation with AF the DSP denied committing torture. Though TT partially confessed after torture, her statement was not taken in accordance with what she said.**

**The torture left her with pain above her eyebrow, an inability to move her right hand, bruising on her face and emotional distress. TT received a general medical check-up before she was tortured. Her father filed an application before Bardiya District court seeking a medical examination and treatment. The court ordered a medical treatment within three days. Her father also filed an oral complaint with the NHRC, and a written complaint, asking for prosecution of the perpetrator and compensation for the torture his daughter received. The NHRC investigated the case for two days from the day before the complaint was filed.**

<sup>18</sup> Ibid., p. 56.

## TORTURE OF JUVENILES

AF reports have consistently found that the rate of torture reported by juveniles is higher than that reported by adults. Nepal is signatory to the Convention on the Rights of the Child (CRC), which provides that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.<sup>19</sup> Article 37 also requires that arrest and detention be a last resort and for minimal time, that children are separated from adults, given access to family and detained “in a manner which takes into account the needs of persons of his or her age”<sup>20</sup>, and that children have access to legal assistance. Nepal’s Children’s Act 1992 also prohibits the torture of those under 16, and provides that juvenile detainees be investigated and brought to trial by specially trained investigators and a juvenile bench.<sup>21</sup> AF’s definition of juveniles includes 17 and 18 year olds.

### Overall<sup>22</sup>

AF’s case studies and data from 2015 not only demonstrate that torture of juveniles occurs, but that it is more prevalent than the torture of adults. In addition, some juveniles reported being kept with adults in detention, due to lack of alternative accommodation, while others were not provided with legal assistance or were unable to meet their family.

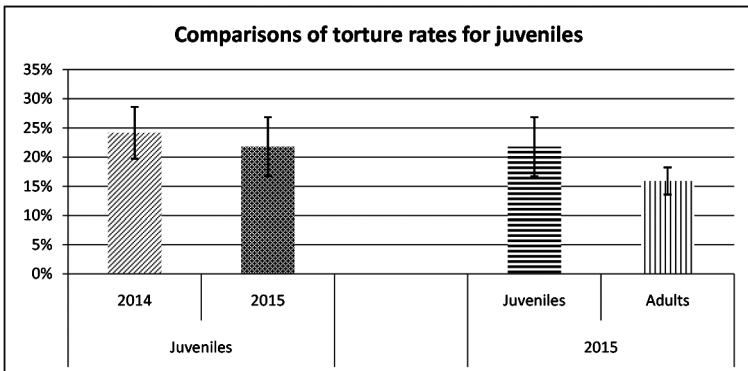


Figure 7: Comparison of torture rates: 2014/2015 and Juveniles/Adults

<sup>19</sup> UN (1989), UN Convention on the Rights of the Child. Art. 37.

<sup>20</sup> Ibid., Art. 37c.

<sup>21</sup> Advocacy Forum (2010), Torture of Juveniles in Nepal.

<sup>22</sup> See Annex 3h for data.

AF interviewed 257 juvenile detainees of whom 56 (21.7%) reported torture or other ill-treatment.

That proportion has decreased slightly, but not significantly, since 2014. However, rates for torture of juveniles are higher, and significantly so, than for adults. The overall rate of torture is 17.2%; for juveniles it is 21.7%. Removing the juvenile data from the overall number suggests that the torture rate for those over 18 is 15.9%, which is significantly different.

It is concerning that juveniles reporting torture, all of whom were boys, accounted for 56 out of the 208 reports of torture, or 26.9% of all reports of torture.

### *Age*<sup>23</sup>



Figure 8: Number of juvenile detainees interviewed, by age

The juvenile data included children as young as 10, though the majority were 16 or over; 190 detainees were 16-18 years old. Within the group of juvenile detainees, age was not significantly related to rates of torture, though 16-year-olds reported the highest rate of torture at 33%. Restricting the analysis to those 16 or under gives an average rate of torture of 24%, which was not significantly different from 20% of 16-18s reporting torture.

<sup>23</sup> See Annex 3g for data.

### ***Caste***<sup>24</sup>

Generally, juveniles reported higher, but not significantly higher, rates of torture than adults of the same caste, in line with juvenile rates being higher generally. Chhetri and Dalit juveniles reported significantly higher rates of torture than adults. Higher rates among Newar and Muslim juveniles were of uncertain significance owing to small sample size.

### ***District***<sup>25</sup>

The torture of 8 juveniles out of 11 detained in Baglung is of concern. In this district in 2014 none of only 3 juvenile detainees claimed they were tortured. Juvenile detention in Kathmandu District increased only at a 0.90 confidence level.

There was only one difference between adult and juvenile torture by location; in Banke, juveniles reported torture in 36.5% of cases, compared to 23.6% in adults. This was close to significant at the 0.05 level ( $p=0.052$ ), and suggests that juvenile torture in Banke is more prevalent than the torture of adults.

### ***Case Study – Torture of a Juvenile, with Victim Requesting Investigation***

**The case of TR is emblematic of multiple trends identified this year. He was 16 years old at the time of arrest and was beaten repeatedly by police, causing a broken leg.**

**TR was arrested in Dang District. He was 16 at the time. The police entered a dance he was attending; one officer kicked him to the ground then kicked him repeatedly in the legs. This left TR with difficulty walking, so the officer carried him to the police van. He and six friends were arrested – two were 17 years old and the rest were 16. An officer kicked the detainees during the journey.**

**They were taken to hospital for check-up; however, the doctor did not examine TR's injured leg. He did not inform the doctor of his injuries out of fear.**

<sup>24</sup> See Annex 3c and 3d for data.

<sup>25</sup> See Annex 3f for data.

The detainees were then transferred to Ghorahi Police Office. The next morning, TR and his friends were made to lie across cement electricity poles, and were struck 5 or 6 times with police batons. An officer forced the detainees to “jump like a frog” and move their hands and legs “so that bruises would vanish”.



Another officer took TR inside and told him to strip to his underwear, on the pretext of checking his injuries. As TR removed his trousers, the officer beat him on the back with a stick six times. After checking for evidence of torture, the officer took TR back to the other detainees, then hit him

on the legs 6 or 7 times.

They were taken to Dang DPO. There, TR was provided with a warrant and detention letter. An Assistant Sub-Inspector took him to hospital where an x-ray showed that his right leg was broken. The police then told TR would be released if he signed a document which entailed that he was injured while trying to escape from the police. He did so.

TR was referred to a hospital in Nepalgunj and returned home. The police made his mother and another villager sign a paper without telling them what it was. The next day, the 20<sup>th</sup>, TR was taken to Nepalgunj in an ambulance, and on the 21<sup>st</sup> he was admitted to hospital, where his fractured leg was operated on. TR’s case was communicated to multiple human rights bodies.<sup>26</sup>

### *Charge*<sup>27</sup>

The only change in rate among juveniles was a significant drop in the proportion of detainees charged with rape being tortured.

<sup>26</sup> NHRC, AG, HR Cell, AHRC, OMCT, AI, HRW. [AHRC Urgent Appeal Case: AHRC-UAC-110-2015].

<sup>27</sup> See Annex 3e for data.

Compared to adults, juveniles reported much lower rates of torture for theft – 22%. The rates for adults were 37.9%, higher than the overall reported rate of torture for those held on suspicion of theft at 30.1%.

### ***Gender***<sup>28</sup>

Overall, AF interviewed 18 girls and 239 boys in detention.

No girls reported torture. 56 boys reported torture, 23%, which was significantly higher than the proportion of adult men reporting torture (17%). Boys provided 21% of reports of torture among the overall male population of detainees visited by AF, and 26.9% of torture overall.

### ***Compliance***<sup>29</sup>

Rights that apply to other detainees are also relevant for juveniles. (See the Compliance section for information on overall trends in detainees' rights, and for overviews of other relevant legal instruments.)

### **Charge**

Juveniles were significantly less likely to be informed of the charge against them: while 11.9% of adults were not informed of their charge, 17.8% of juveniles were not. Only 2.3% of juvenile detainee informed of charge.

### **Health check**

98% of juveniles received a health check. This represents a significant increase from 90% in 2014 and now is not significantly different from adults.

### **Government food**

96% of juveniles received government food. This is not different from adults or from 2014.

### **Access to family**

77% of juveniles had access to family, below but not significantly different from adults (82%). This had not changed significantly since last year. It is concerning that 23% of juveniles did not have access to family members.

<sup>28</sup> See Annex 3a and 3b for data.

<sup>29</sup> See Annex 4a-g for all related data.



### **Brought before court**

59.9% of those who went to court were produced within 24 hours, a 10% near-significant increase from 2014. There were no significant differences between adults and juveniles with regard to being taken to court in time, or not being taken to court at all.

### **Judge asked about torture**

The judge asked about torture in only 25.7% of cases brought to court. This was, however, a significant improvement from 2014, when judges asked about torture in only 15.4% of cases. It should be noted that a 2012 report on the juvenile bench and juvenile justice in Nepal, produced in 2012 by the National Judicial Academy (NJA), found that the courts had seen no incidents of torture in cases involving children<sup>30</sup>, and that no health check-ups suggested torture of juveniles.<sup>31</sup> This is at odds with AF's information and reporting both from 2012 and the years since. Torture and the threat of torture were used in some 2014/15 cases to dissuade victims from reporting torture to the courts, and as such the judge simply asking about torture is no guarantee that victims can report torture. An alternative explanation is that judges did not report torture to the NJA.

### ***Case Study - Failure to comply with juvenile rights – Udayapur district***

**NU was arrested in Udayapur District, by 6-7 officers of Udayapur police in civilian dress. He was 13 at the time.**

**He was made to lie on the floor then beaten on the soles of his feet for 15 minutes by 2-3 officers torturing in turn, hit in the cheek and had his hair pulled. He was transported to the Metropolitan Police Crime Division in Kathmandu on a public bus, escorted by two officers. He was taken to the crime department and interrogated; 2-3 officers beat him around the head, kicked him and beat his back with a plastic stick. The torture caused pain for days; though NU was examined at hospital on the day of his arrest, and two days later, but he did**

<sup>30</sup> NJA (2012), Research on Functioning of Juvenile Bench in Nepal, Lalitpur: National Judicial Academy, p. 30.

<sup>31</sup> Ibid., p. 56.

not know he had a right to treatment and received no treatment in the police office.

The police threatened that they would tell the public prosecutor that NU was 17, and his age was recorded as 16 on the statement. AF instigated a case to prove his actual age.



AF also reported on two cases of juveniles who were detained in Banke, but not tortured. These cases rather demonstrate failure in compliance with juvenile rights. SH was arrested in Banke. His parents were informed on the same day, but arrest and remand warrants were not obtained until two days later. He was handcuffed during arrest and medical examination. SH reported that although a child specialist was present, the case was not heard by the juvenile bench.

OS was 12 years old at the time of his arrest. He was not handcuffed, but was detained with adults on the grounds that suitable separate space was unavailable. AF advised the chief of the area police office of the rights of juveniles in detention, after which the officer undertook to provide a separate space for the child. OS's parents filed a case with advice and legal aid from AF on the grounds that he was detained with adults, against child justice procedures.

These cases demonstrate failure to safeguard the rights of juvenile detainees, both in relation to torture and in general. The failure to hear juvenile cases before a juvenile bench, the detention of children with adults, and the need to prove age to prevent juveniles being treated as adults all suggest that arresting authorities are not sufficiently aware of juvenile rights, are not willing to comply with simple procedures and tend to treat juveniles in the same way as adults.

## COMPLIANCE WITH LEGAL SAFEGUARDS

In addition to data on torture, AF collects information on whether detainees' rights under the Constitution and CRT are upheld. The section below details the overall trends in this respect during 2015.

### ***Whether reason for arrest was provided, and at what stage in detention***<sup>32</sup>

In 2015, the vast majority of detainees were given a reason for arrest only after they were detained; the percentage of people given a reason for arrest at the time of arrest decreased significantly from 10.2% to 4.1%. Detainees given a reason only after being detained increased from 77.1 to 82.6%. This continues a trend identified in 2014. 13.2% of detainees were not provided with a reason for their arrest at any time before the visit of AF.

In addition, juveniles were more likely than adults to not be informed of their charge – 17.9% against 11.9%. This highlights the concerning trend that torture is more common for juveniles, while compliance with detainee rights is worse.

Accurate and timely information about charges should be provided using an arrest warrant, in accordance with Article 20 of the Constitution. There are exceptions specified in Article 17 of the Police Act 2012 including when the detainee is “known to have committed or attempt to commit any crime which is punishable by law with imprisonment for a term of three years or more than three years”<sup>33</sup>, though they must still be brought before a court within 24 hours.<sup>34</sup> In some cases, warrants were not obtained on the date of arrest even though the arrest was not in response to an offence in progress. The use of warrants, charges and accurate documentation is crucial to ensure detainees are not being held illegally or tortured in private properties, public spaces, or other unofficial detention sites. Additionally, the Children’s Act

<sup>32</sup> See Annex 2a for data.

<sup>33</sup> GoN (2012), Police Act 1955/2012, Art.17(1).

<sup>34</sup> Ibid. Art.17(2).

provides that children cannot be brought before a court without a legal practitioner present.<sup>35</sup>

### ***Were detainees brought before a judge/competent authority within 24 hours of detention?*<sup>36</sup>**

Article 20 (3) of the 2015 Constitution provides that “Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the time and place of arrest to such authority...”.<sup>37</sup> The article also proscribes detention for more than 24 hours without a specific order to remand in custody from a judicial authority.<sup>38</sup> In 2015, 90.2% of detainees reported that they were presented before a competent authority within 24 hours of detention. This had not changed substantially since 2014

### ***Health check-up before being taken into detention*<sup>39</sup>**

Section 3(2) of the CRT requires that “In detaining and releasing any person, the concerned official shall get such person examined physically by a medical practitioner engaged in the governmental service as far as possible and him/herself examine such person in cases where no such medical practitioner is available, and maintain records thereof.”<sup>40</sup>

This provision is the most consistently observed, and the only one to have been observed more frequently in 2015 than in 2014. 97.9% of detainees received a health check in 2015, significantly increased from 93.5% in 2014. A review of AF’s work undertaken by an independent consultant found that increases in the rate of health checks carried out was directly attributable to AF’s monitoring work.<sup>41</sup> However, AF’s case studies suggest several issues that continue to undermine the quality of those medical assessments. Detainees almost always received health checks at the time they were

<sup>35</sup> GoN (1992), Children’s Act 2048/1992, Art.19(1).

<sup>36</sup> See Annex 2c for data.

<sup>37</sup> GoN (2015), Constitution of Nepal, Art.20 (3).

<sup>38</sup> Ibid.

<sup>39</sup> See Annex 2d for data.

<sup>40</sup> GoN (1996), Compensation Relating to Torture Act. Art. 3(2).

<sup>41</sup> Schonveld , B. (2011),Final Evaluation of Advocacy Forum’s Prevention of Torture Project, p. 3.

taken into custody, i.e. after arrest but prior to torture, while in cases where detainees were taken for a medical check-up after they were tortured some reported that they had been threatened, or felt threatened, with further torture if they reported their torture and injuries to medical staff. As a result some did not do so. Some check-ups were perfunctory, and several interviewees reported that the doctor carrying out the examination had only asked if they had consumed alcohol rather than conducting physical examinations. Finally, police officers often remained present during the medical check-up further reducing the chances of the detainees complaining to the medical professional.

During medical examination, confidentiality should be guaranteed and when injuries suggest torture, the medical professional in question should be required and empowered to submit a medical report with a detailed description of the injuries and/or psychological effects observed.

### ***Contact with family members***<sup>42</sup>

While contact with family members can also relate to preventing incommunicado detention, Nepal's obligations under the CRC mean that this is significant to the treatment of juvenile detainees. 18.5% of detainees overall had not had contact with family members; in one case relating to homicide in Kathmandu, a detainee was allowed contact over the phone with his mother but pressured to tell her he was away in Bhaktapur rather than in detention. With regard to juveniles, the additional importance of access to family is noted under the CRC's Article 37.<sup>43</sup>

<sup>42</sup> See Annex 2f for data.

<sup>43</sup> UN (1989), UN Convention on the Rights of the Child, Art. 37c.

## **PART 3 - THE LEGAL LANDSCAPE OF TORTURE IN NEPAL**

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The domestic legal situation regarding torture in Nepal was largely unchanged from 2014 to 2015. Key developments highlighted here are the second Universal Periodic Review (UPR), the continued failure to criminalise torture, and the case of Kumar Lama, where AF's work is helping set a historical precedent with regard to torture and universal jurisdiction in respect of serious human rights violations during the conflict period in Nepal.

As context, Nepal has a number of provisions in its domestic law which relate to torture, including provisions in the Constitution which prohibit torture, and the CRT which provides for compensation and departmental action against offenders. However, torture is still not a criminal offence in Nepal. AF has analysed the CRT and the legal situation of Nepal at length in previous dedicated reports. As such, this section provides only a brief reminder of Nepal's international obligations and domestic provisions.

### **INTERNATIONAL OBLIGATIONS**

Nepal also has obligations under the international human rights instruments it is party to. The international legal instrument most directly concerned with torture is the UN Convention against Torture (CAT). Nepal is a state party to the convention, having signed and ratified it in 1991.

The Committee Against Torture monitors implementation of the CAT. The Committee comprises ten independent experts and reviews all state parties' reports on a regular basis. The Convention outlaws torture comprehensively and without exception, requiring *inter alia* that states parties;

- prevent torture in their jurisdictions (Art. 2),
- make torture a criminal offence under domestic law (Art. 4),
- investigate, extradite or prosecute offenders under its jurisdiction (where the offence or perpetrator is within the jurisdiction, or the offender or victim a citizen of the state) (Art. 5-7 (1)),
- educate and inform legal, medical and security personnel about the prohibition of torture (Art. 10)
- impartially investigate allegations of torture (Art 12-13),
- provide redress and compensation to victims and their dependents (Art. 14),
- and exclude evidence obtained under torture (Art. 15).

These provisions are non-derogable – that is, their contravention cannot be justified and they cannot be opted out of under any circumstances, even in times of public emergency.

Nepal is not a signatory to the Optional Protocol to the Convention Against Torture (OPCAT), and has received multiple recommendations from other UN member states during the UPR that it ratifies the Protocol. OPCAT guarantees that state parties comply with Subcommittee on Prevention visits as well as the establishment of a national preventive mechanism so as to facilitate monitoring and reporting and prevention of torture.

In addition to the CAT, other instruments of international law ratified by Nepal contain provisions, which should oblige particular responses from Nepal.

The International Covenant on Civil and Political Rights (ICCPR) includes provisions that

- Prohibit torture non-derogably; ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’ (Art. 7)
- Prevent arbitrary detention, provides that arrested persons be charged, entitled to a trial and entitled to compensation in the case of unlawful detention (Art. 9)
- Also of relevance is the Convention on the Rights of the Child, which contains provisions, which require state parties to ensure that;

- “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”<sup>44</sup>
- Children in detention are treated “in a manner which takes into account the needs of persons of his or her age”<sup>45</sup>
- Children in detention are allowed “correspondence and visits” from family
- Children in detention are separated from adult detainees

The Kumar Lama case demonstrates how international instruments and their proper implementation can reduce impunity for torture. Colonel Lama was arrested in the UK and charged in 2013 with committing torture during the civil war in Nepal. The arrest was made possible by domestic law that implemented the United Kingdom’s obligations under CAT and other international instruments to prosecute suspected perpetrators of torture if in the territory of a member state.<sup>46</sup> Under customary international law and international instruments including the ICC Statute, perpetrators of some crimes against humanity, including torture, must be arrested and prosecuted by any party state.

The Lama case was in progress at the time of writing. It demonstrates one avenue to prosecution even in the absence of domestic criminalisation of torture. It also shows how domestic legislation can work in concert with international obligations to produce far-reaching accountability. The case demonstrates that impunity is not acceptable, and underlines the significance and severity of torture as a crime. It is also a reminder that Nepal must fully implement various obligations, including the CAT, and join others (for example, by ratifying the Rome Statute )if it is to successfully deal with perpetrators, and serves as an example for what can be achieved when international instruments are respected.

## THE DOMESTIC LEGAL SITUATION

Torture is not specifically criminalised in Nepal. The current Act that explicitly addresses restitution and punishment for torture is the Compensation Relating to Torture Act 1996 (CRT), under which torture is punished as a disciplinary

<sup>44</sup> UN (1989), UN Convention on the Rights of the Child. Art. 37a.

<sup>45</sup> Ibid. Art. 37c.

<sup>46</sup> UN (1984), Convention Against Torture. Art. 6, 7.



matter by the concerned institution (like the NP) at the order of the District Court hearing the case, though the decision of how to punish is that of the security force to which the offender belongs.<sup>47</sup>Bills to circumscribe torture explicitly have been drafted, though none have been passed or enacted. This section addresses a variety of provisions in Nepal that already exist and relate to torture, discusses the progress of the proposed 2014 Bill and the 2015 Constitution's approach to torture, and finally discusses the prospect of a new penal code for Nepal that includes the criminalisation of torture.

### ***The 2015 Constitution***

A new constitution was promulgated in September 2015. The preceding 2007 interim constitution (IC) contained Article 26 which provided that “No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment”, and that “Any act referred to in Clause (1) shall be punishable by law, and any person so treated shall be provided with such compensation as may be determined by law”. Some may argue that the terms of Article 26 did not necessitate criminal prosecution, merely punishment, making the CRT sufficient under the IC. However, the CRT is not compliant with Nepal's obligations under Article 1 of the CAT, as it does not criminalise torture and under Nepal's Treaty Act, when a law is not in line with a treaty, the offending provisions are null and void. As such, the provisions of the IC with regards to torture were non-compliant with international human rights law.

The 2015 Constitution has retained the wording of the IC. It provides that:

- “(1) No person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment.  
 (2) Any act mentioned in clause (1) shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation in accordance with law.”<sup>48</sup>

As such, the new 2015 Constitution is also non-complaint with international human rights law and Nepal's obligations under the CAT and other treaties to which it is a party.

<sup>47</sup> GoN (1996), Compensation Relating to Torture Act 1996. Art. 7.

<sup>48</sup> GoN (2015), Constitution of Nepal, Art. 21.

As a party to the CAT, the GoN must ensure that the laws which actualise punishments and compensation for torture are compliant with international standards by excluding any limitations on filing a case, ensuring witness safety, and making torture a criminal offence with punishment in proportion to the gravity of the offence. However, currently there is no such law, and the CRT remains the only legal recourse for torture survivors to obtain compensation and punishment. The 2015 Constitution provides no direct protection or redress for torture victims, and the legislative proxy, which could do so is not compliant with Nepal's obligations under the CAT.

In terms of detainee rights, The Rights Relating to Justice as set out in Article 24 of the IC were not consistently implemented while it was in force. The article provided that detainees should be given reasons for arrest, access to a legal practitioner, and should be produced before a judge within 24 hours. AF documented how in 2013, for example, 16.1% of detainees were not provided with any reason for arrest at any stage<sup>49</sup>, nor were 43.7% produced before a court within 24 hours.<sup>50</sup> These provisions were retained in the new Constitution, but the data from 2015 suggests that trends in these respects had not changed prior to the promulgation, and, given the similarity in wording, are unlikely to have changed in late 2015 after its promulgation.

## ***Other Provisions***

### **Muluki Ain**

Nepal's current General Code<sup>51</sup>, covering civil and criminal law, does not criminalise torture or mention it as an offence in its own right.

### **Civil Rights Act 1955**

The CRA contains several provisions relating to treatment of detainees. It requires that anyone arrested must be provided with a "reasoned notice of arrest as soon as possible"<sup>52</sup> access to a lawyer, must be brought before a

<sup>49</sup> Advocacy Forum (2013), *Is the Government Unable or Unwilling to Prosecute Torture?* p. 58.

<sup>50</sup> *Ibid.* p. 64.

<sup>51</sup> *Muluki Ain* available in English [http://nepalconflictreport.ohchr.org/files/docs/1963-04-12\\_legal\\_govt-of-nepal\\_eng.pdf](http://nepalconflictreport.ohchr.org/files/docs/1963-04-12_legal_govt-of-nepal_eng.pdf)

<sup>52</sup> GoN (1955), *Civil Rights Act 1955*. Para. 15.

judicial authority within 24 hours, and must not be detained further without order of that authority. It also provides that detainees may file for habeas corpus, or petition the Court of Appeal.

### **Evidence Act 1994**

The Evidence Act includes the provision that facts obtained by coercion, torture or the threat of torture may not be taken as evidence.<sup>53</sup>

### **Police Act 1955**

The Police Act does not mention torture or specify a penalty for police officers committing torture. Rather, the Police Rules determine police conduct. Punishments for failures of conduct include demotion and dismissal; however, the offences specified do not include torture explicitly.<sup>54</sup> Torture and the treatment of detainees are not mentioned in the “Conduct” section of the Police Rules.<sup>55</sup>

### ***New Penal Code for Nepal***

Nepal’s domestic legal situation is set to change; in November 2014, three bills were proposed which would reform justice in Nepal. The Draft Penal Code would reform the *Muluki Ain*, while the Draft Criminal Procedure Code and Draft Sentencing Bill would introduce legislation on criminal procedure and sentencing.

The proposed Penal Code includes the criminalisation of torture<sup>56</sup>, with sentences of 15 years’ imprisonment or a NRs 500,000 (US\$4,600) fine. The penal code would also criminalise disappearances, and assign whole-life sentences for genocide, murder after torture, abduction and rape.<sup>57</sup> The bill also makes provision for a state fund for compensating victims of crime. It is unclear how this will affect the proposed “Anti-Torture Bill”, and whether the CRT Act 1996 would be repealed under the new code. The

<sup>53</sup> Evidence Act 2031/1994, para 9, 2a, 2

<sup>54</sup> GoN (1992), Police Rules 2049/1992, Para. 87, 88.

<sup>55</sup> Ibid. Chapter 8.

<sup>56</sup> Kharel, P. (2014), Ministry proposes changes in civil, criminal codes, Kathmandu Post, 17/10/14.

<sup>57</sup> The Kathmandu Post (2014), Civil, criminal code bills tabled. Kathmandu Post (online), 3/11/14.

Legislation Committee aimed to finalise the new codes in the 6 months from December 2015.<sup>58</sup>

The new Code should not jeopardise the right and access of torture victims to adequate compensation. Compensation available to torture survivors must recognise the gravity of the crime as well as the long-term emotional and physical injury torture can cause. As such, any provision in the new Penal Code for compensation should not have a maximum ceiling.

AF and REDRESS's joint analysis of the bills in 2011 notes several issues relevant to torture and treatment of detainees;

- The bill establishes “command liability, which is a welcome step in providing accountability of commanders for the actions of officers. It must, however, ensure that this applies to all offences and includes torture.”<sup>59</sup>
- The bill should require arresting authorities to contact lawyers prior to interrogation, and legal representatives should be present during interrogation to prevent torture.<sup>60</sup>
- The bill should explicitly prohibit coercion in evidence gathering, and the submission of evidence or confessions obtained through coercion. This would supplement the Evidence Act.<sup>61</sup>

Additionally, as AJAR's 2011 analysis of the proposed penal code notes, “the crime against torture is intertwined with other crimes/offences... it should be provided with the punishment thereby making it as a separate sort of offence/crime.”<sup>62</sup> Since, as the report argues, severity and classification of crime in Nepal is usually derived from the punishment assigned, it is also important that torture be understood as a crime of distinct gravity as well as type.

<sup>58</sup> The Kathmandu Post (2015), House Panel To Seek Feedback. Kathmandu Post, 1/12/15.

<sup>59</sup> REDRESS/Advocacy Forum (2011), Comment on Nepali Draft Criminal Code, Draft Criminal Procedure Code and Draft Sentencing Bill: Provisions relevant to a Fair Trial, Enforced Disappearance and Sexual Violence, p. 2.

<sup>60</sup> *Ibid.*, p. 3.

<sup>61</sup> *Ibid.*, p. 9.

<sup>62</sup> AJAR Nepal (2011), Civic Appraisal Constructive Improvement Options, p. 24.

### ***National Action Plan on Human Rights***

The NAPHR for 2014-2019 included objectives relating to torture. Of particular significance were;

- To criminalise torture in the first two years of the plan by enacting a new act.<sup>63</sup> As of June 2016, this has not been achieved.
- To establish a central compensation fund for torture victims. This would expedite restitution for torture. As of June 2016, this has not been achieved
- To “enhance knowledge and skills on implementation of human rights laws in Nepal Police”<sup>64</sup>, including training security officers, quasi-judicial officers and ministry staff in human rights.
- To “enact and reform laws in line with constitution, human rights and humanitarian treaties and standards” and incorporate UPR and UN recommendations.<sup>65</sup>

Although these goals are welcome, Nepal’s NAPHR was criticised by the UN in-country team as “generic”.<sup>66</sup> The plan does define objectives and activities for various aspects of human rights, but these are not all developed and specific—indeed, the plan “has not aimed at including all the thematic areas of human rights and it should be viewed as a complementary document to other Plans of Action.”<sup>67</sup> Implementation is the responsibility of individual ministries and security forces at the broader level, and district officers at the district level. The plan is coordinated by the Office of the Prime Minister and Council of Ministers, and monitored by a committee composed of the secretaries of various ministries. The concern here is that as the scope of the plan is broad and some goals are not precise, the coordination required could pose a challenge to full implementation.

This section has so far established the legal background to torture in Nepal. The next part discusses the processes and outcomes of Nepal’s Universal

<sup>63</sup> GoN (2015), Fourth National Plan of Actions on Human Rights, para. 3.1.8, p. 63.

<sup>64</sup> Ibid., para. 3.1.11, p. 79.

<sup>65</sup> Ibid., para. 3.1.5, p. 41.

<sup>66</sup> HRC (2015), Compilation prepared by the Office of the United Nations High Commissioner for Human Rights...1c (23).

<sup>67</sup> Ibid., para. 2.3.4.

Periodic Review in 2015, and compares its findings to those of AF in 2015.

### **THE UNIVERSAL PERIODIC REVIEW – A “MERE RITUAL”?**

The Universal Periodic Review (UPR) is a mechanism for promoting human rights and monitoring the human rights situation of UN states parties. It is administered by the Human Rights Council, and reviews 48 countries a year in three 2-week sessions.<sup>68</sup> Each country is considered every four years.

The process has several parts. Initially, reports on human rights in the state under review are compiled and submitted by the state itself and by the OHCHR (drawing on the reports of the UN’s various treaty bodies), and “other relevant stakeholders”, commonly national and international NGOs. AF provided joint submissions to the UPR with other NGOs.<sup>69</sup> These documents are reviewed through discussion between UN member states and the state under review. The review assesses compliance with international human rights instruments and humanitarian law, and results in recommendations, which the state under review can accept or provide comment on. Nepal’s most recent UPR was considered on 4 November 2015. The ALRC has described the UPR in relation to Nepal as a “mere ritual”.<sup>70</sup> This section describes and discusses Nepal’s 2<sup>nd</sup> UPR process and outcomes in respect of torture.

### ***OHCHR Information Summary***

The OHCHR’s compilation of UN information noted that Nepal has failed to apply recommendations from multiple UN treaty monitoring organisations, that torture continues, and that monitoring methods for torture are lacking. It noted in particular that;

<sup>68</sup> From <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>

<sup>69</sup> Advocacy Forum, Member Organizations of National Network for Safe Migration (NNSM) (2015), *The Emerging Issues and Challenges of Nepalese Migrant Workers and Advocacy Forum*, REDRESS (2014). Submission to the Human Rights Committee Ahead of its Examination of Nepal’s Second Periodic Report.

<sup>70</sup> ALRC (2016), *NEPAL: Universal Periodic Review has become mere ritual* (Oral Statement to the 31st Session of the UN Human Rights Council).

- despite the recommendations of the Committee Against Torture, the UN Special Rapporteur, and the UN country team in Nepal, Nepal has failed to ratify OPCAT<sup>71</sup>
- the Special Rapporteur in 2012, the CAT and HRC have all recommended the criminalisation of torture in the draft penal code.

In terms of monitoring, the OHCHR found that;

- The NHRC was understaffed, needed greater capacity for systematic monitoring and visits to detention sites, and that its recommendations were not always followed despite “being binding under domestic law.”<sup>72</sup> This finding reiterates the importance of AF’s work as the only human rights organisation in Nepal carrying out routine visits to detention sites.
- The Attorney General and Nepal Police Human Rights Unit lacked independence.<sup>73</sup>
- Nepal has not submitted its third, fourth or fifth reports to the Committee Against Torture. These were initially due in 2008. Nepal’s concluding observations to the review due in 2006 were made in 2007, and it still has not submitted follow-up clarifications.<sup>74</sup> The failure in dialogue prompted the Committee to make a confidential inquiry on Nepal in 2010, resulting in a report in 2011.

As to torture and its prevention, the OHCHR report drew on reports by the Committee Against Torture and the Special Rapporteur, and found that;

- “torture remained widespread and had seen a resurgence since 2009.”<sup>75</sup> This finding can be understood to relate to the increase seen in 2011 and 2012; AF observed a decline in reported torture from 2012 to 2014,

<sup>71</sup> HRC (2015), Compilation prepared by the Office of the United Nations High Commissioner for Human Rights...1a (1).

<sup>72</sup> Ibid. 1c (19).

<sup>73</sup> Ibid. 3c (50).

<sup>74</sup> Ibid. 2a (Table 2).

<sup>75</sup> Ibid. 3b (34).

- “juveniles continued to be detained in adult facilities and to report torture in detention”<sup>76</sup>, the age of criminal responsibility is low (ten years) and children are systematically denied fair trials<sup>77</sup>,
- Clandestine detention and torture continued, and Nepal has not criminalised this,
- There is a “lack of legal clarity concerning the inadmissibility of evidence obtained as a result of coercion”<sup>78</sup>, and Nepal should amend the Evidence Act to rectify this,
- The NHRC is “too big to be effectively functional.”<sup>79</sup>

The OHCHR’s summary also noted that human rights defenders “were subjected to physical attacks, death threats, harassment and reprisals by security forces, police, armed groups and youth wings of political parties.”<sup>80</sup>

The OHCHR information confirms what AF’s experiences and data show: torture remains widespread and systematic, and both monitoring and legislation around torture are insufficient to prevent it.

### ***Nepal’s Submission and Comment***

Unsurprisingly, Nepal’s own report on its human rights situation provided a different vision. The GoN argued that the CRT “prohibit[s] all kinds of torture for any purpose. No prevailing laws of Nepal grants immunity to anyone in case of torture.”<sup>81</sup>This is a misrepresentation. No law explicitly enables the criminal prosecution of torture in line with the requirements of the CAT. Furthermore, as AF/REDRESS note in their joint submission to the UPR, multiple laws ‘including the Army Act, the Police Act, the Armed Police Force Act, the Public Security Act, the National Parks and Wildlife Conservation Act and the Essential Goods Protection Act’<sup>82</sup> all contain provisions which effectively grant de jure impunity to officers.

<sup>76</sup> Ibid. 3b (35).

<sup>77</sup> Ibid. 3c (52).

<sup>78</sup> Ibid. 3c (51).

<sup>79</sup> Ibid. 1c (23).

<sup>80</sup> Ibid. 3e (61).

<sup>81</sup> GoN (2015), National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Nepal. para. 50.

<sup>82</sup> Advocacy Forum, REDRESS (2014), Submission to the Human Rights Committee Ahead of its Examination of Nepal’s Second Periodic Report...para. 42.



For example, Section 37 of the Police Act provides immunity to police employees “for any action taken by him or her in good faith while discharging his or her duties.”<sup>83</sup> Similar provisions are found in the Armed Police Force Act<sup>84</sup> and Army Act.<sup>85</sup> The definition of “good faith” is not explicit, and the provisions are not explicitly limited to exclude human rights violations. Aside from these sources of de jure immunity, AF’s case studies also demonstrate how fear of the police and the influence of police over detainee statements and conduct can make detainees reluctant to seek redress for torture.

The GoN submission also notes that departmental action has been taken against 62 police personnel, and that this constitutes evidence of a response to torture. However, departmental action is not a sufficient mechanism to fulfil Nepal’s international obligations. AF recorded over 200 instances of torture in 2015 from just ten districts. By comparison, 62 instances of departmental action across the whole of Nepal (presumably since 1996, though it is unspecified) is a very limited number, and the process relies on victims bringing cases within a 35-day period. AF’s case studies show that victims often do not wish to bring cases due to fear of the police, indicating that there is little faith in the CRT to provide accountability and security for victims. The GoN report points to the Torture Bill and new penal code as evidence for “efforts to make domestic legislations more compatible with the CAT”<sup>86</sup> – however, as of June 2016 the former has been in limbo, while the latter legislation is yet to be passed.<sup>87</sup>

In terms of juvenile justice, the GoN points to the Investigation and Prosecution Guide 2009 on Juvenile Justice, and Juvenile Justice (Procedural) Rules 2007 as evidence for compliance. However, AF’s 2015 data shows that despite these guidelines and rules juveniles are still subject to higher rates of torture and are less likely to be afforded their rights in detention than adults. The provision of juvenile benches is undermined by the lack

<sup>83</sup> GoN (2012), Police Act 1955/2012, para. 37.

<sup>84</sup> GoN (2001), Armed Police Force Act 2058/2001, para. 26.

<sup>85</sup> GoN (2006), Army Act 2063/2006, para. 22.

<sup>86</sup> GoN (2015), National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Nepal, para. 12.

<sup>87</sup> Acharya, P. (2016), 40 bills gather dust in House, Himalayan Times, 19/5/16.

of facilities for separate detention for children, and failure to comply with rights for juveniles in detention.

The government blames its failure to comply with international obligations on prolonged post-conflict recovery,<sup>88</sup> lack of elected local authorities, geography and “low capacity of implementing agencies.”<sup>89</sup> However, AF’s data suggests that torture and failures of compliance are systematic, and that legal structures are also critical to how torture remains embedded in policing practices. The GoN also notes that “[b]ringing desired changes in behaviour, practice and attitude of socially and culturally interwoven mind-set is a long-term process<sup>90</sup>”, and while this is correct, reforming organisational culture can be achieved in part by reforming organisational structure, and providing measures to reduce impunity. As such, the failure to criminalise torture remains a critical impediment to reform. The low frequency of departmental action demonstrates that impunity for torture is systemic, while the involvement of multiple officers and mid- to high-ranking officers in some cases suggests a culture of torture persists in Nepal Police.

### ***UPR recommendations and Nepal’s responses***

The UPR produced 195 recommendations for Nepal from 73 UN member states.<sup>91</sup> Nepal initially accepted 166 of these, including;

- To criminalise and impartially investigate acts of torture, and provide victims the right to reparation<sup>92</sup>
- To provide the legislation and funding to ensure the NHRC is independent<sup>93</sup>

It also reported that some recommendations were in the process of implementation, including

<sup>88</sup> GoN (ibid.), para. 89.

<sup>89</sup> Ibid. para. 90.

<sup>90</sup> Ibid. para. 91.

<sup>91</sup> NHRC (2015), Suggestions of the National Human Rights Commission Nepal to the Government of Nepal.

<sup>92</sup> GoN (ibid.), para. 121.3, para. 121.4.0.

<sup>93</sup> Ibid., para. 121.11, para. 121.12.

- Education for security forces on human rights, including torture prevention<sup>94</sup>
- Nepal merely noted (i.e. did not accept) 29 recommendations.<sup>95</sup> Several of these related to police governance and torture. In particular, the GoN did not accept the UK’s recommendation that Nepal;
- “Strengthen the rule of law by establishing an independent complaints commission capable of investigating and prosecuting complaints against the security forces”<sup>96</sup>

This was on the grounds that

“as per the prevailing laws of Nepal, no security personnel can enjoy immunity from criminal liability in case of human rights violation. In such case, the legislation of Nepal provides adequate mechanisms to investigate and prosecute the alleged perpetrators and bring them to justice. National Human Rights Commission, an independent constitutional body, is empowered to effectively monitor the situation of human rights violation.”<sup>97</sup>

This response conflicts with OHCHR and member state perceptions that the NHRC is insufficiently resourced and independent to be fully effective. The frank assessment of the human rights situation by the NHRC spokesperson at the 31<sup>st</sup> HRC session in March 2016 resulted in her summoning before the Prime Minister,<sup>98</sup> encapsulating the issue that while the NHRC can express itself independently its proximity to government can result in pressure.

Finally, Nepal determined to examine and return responses on other recommendations, including studying the possibilities of ratifying OPCAT<sup>99</sup> and ratifying the Rome Statute.<sup>100</sup> The NHRC recommended that the GoN accept all proposals examined.<sup>101</sup> On 16 March 2016, the GoN said it did not accept some outstanding recommendations that required additional

<sup>94</sup> Ibid., para. 122.24, para. 122.25.

<sup>95</sup> <http://alrc.asia/nepal-universal-periodic-review-has-become-mere-ritual/>

<sup>96</sup> GoN (ibid.), para. 124.15.

<sup>97</sup> Ibid., para. 131.

<sup>98</sup> AHRC (2016), NEPAL: Prime Minister must remain within his jurisdiction. 8/4/16/.

<sup>99</sup> GoN (ibid.), para. 123.1 – 123.6.

<sup>100</sup> Ibid., para. 123.13 – 123.21.

<sup>101</sup> NHRC (2015), Suggestions of the National Human Rights Commission Nepal to the Government of Nepal.

infrastructure, investment, assessment or legislation<sup>102</sup> such as ratifying the Rome Statute. This means that ultimately it accepted 152 recommendations.<sup>103</sup>

A potentially significant change that the GoN pointed out was the removal of some “quasi-judicial powers” from administrative officials.<sup>104</sup> Instead sentences carrying a penalty of more than 1 year must now be heard by a court. AF has previously highlighted the issue of Chief District Officers (CDOs) being able to exercise authority to both arrest and judge detainees, which leaves potential for abuse of power and torture. AF data did not include information on torture of people brought before CDOs, but it remains to be seen what will change. The change in legislation is welcome.

In terms of compliance with mandate holders for Special Procedures of the UN, the GoN restricted its commitment to “invite the mandate holders and Special Procedures on case to case basis.”<sup>105</sup> This includes the Special Rapporteur on Torture, who visited Nepal last in 2005. The GoN’s failure to extend standing invitations to UN mandate holders is disappointing and suggestive of an obscurantist approach to international monitoring and compliance that has also seen the GoN miss three successive reports to the CAT. According to the OHCHR, there are currently 7 Special Procedure requests pending, 7 subject to a reminder, and one postponed.<sup>106</sup> These include the Special Rapporteur on the Situation of Human Rights Defenders (1 request and 5 reminders since 2002, none accepted), Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence (1 request, yet to be accepted). Similarly, the CAT’s 46<sup>th</sup> Session in 2011 adopted a report on Nepal which noted that Nepal had responded to only one request for information between 2007 and 2011, forcing the committee to conduct a confidential inquiry under Article 20 of the CAT. The report found that torture in Nepal was “systematic”<sup>107</sup>, despite the claims

<sup>102</sup> GoN (2016), Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review: Nepal, para. 10.

<sup>103</sup> *Ibid.*, *idem*.

<sup>104</sup> *Ibid.*, para. 29c.

<sup>105</sup> *Ibid.*, para. 25.

<sup>106</sup> List of country visits by Special Procedures.

<sup>107</sup> UN CAT (2011), Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party, para. 108.

of the GoN that “Allegations of systematic practice of torture is essentially an unfair and unilateral story created against Nepal.”<sup>108</sup>

<sup>108</sup> Ibid., para. 115.

## PART 4 - CONCLUSIONS

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The ongoing use of torture in Nepal demonstrates a continuing lack of political will to effectively prevent torture. Despite recommendations from UPR members states, the Committee Against Torture, UN Special Rapporteur on Torture, the NHRC and numerous civil society organisations, torture has not been criminalised in law. Compensation remains the main hope for victims, and departmental action the harshest penalty for offenders. The GoN has not fulfilled its CAT obligations to criminalise, prevent, investigate and prosecute torture thoroughly, and Acts governing security agencies still enable impunity.

The high prevalence of torture among juvenile detainees suggests that the GoN is also failing to fulfil its obligations both under the CAT and CRC. This includes the provision of facilities for juveniles in detention; in 2011, the NJA found that 20% of courts had no juvenile bench facilities<sup>109</sup>, in contravention of Nepal's Children's Act.<sup>110</sup> The lower proportion of juveniles receiving some detainees' rights also indicates that juveniles are more vulnerable to misconduct and torture.

To some extent, the variation in torture between districts suggests that it could be addressed at the local level. Kanchanpur reported one case of torture in 139 interviews while Jhapa reported 20 out of 38. This variability suggests that torture is also determined by local policing culture and practice, even if torture may, on a broader scale, being enabled by legal and political apathy.

<sup>109</sup> NJA (2012), Research on Functioning of Juvenile Bench in Nepal, Lalitpur: National Judicial Academy, p. 15.

<sup>110</sup> GoN (1992), Children's Act 2048/1992, Art. 55(4).

Emblematic cases provide a more detailed understanding of how torture is used in Nepal, as well as where it is used and who carries it out. Torture is consistently used to elicit confessions. Statements of detainees were often not read back to them, were produced under coercion, or were written by police officers. Victims were threatened with more torture should they report torture to judges or activists, or deviate from police-approved statements. Victims were also tortured in some cases until they confessed. The use of torture instead of investigation undermines the integrity and effectiveness of the NP.

Methods of torture are diverse and can be difficult to track. Most detainees in the case studies reported – accurately or not - that they did not require further care for injuries. Psychological torture like threats to kill, or the holding of detainees without warrants, can exert emotional and psychological stress that is harder to express and identify than bruising. Physical injuries occurred too – from broken limbs to bruising – and practices like beating and torture with water carry the risk of permanent injury or death to the victim. There is an apparent belief among police that physical activity reduces bruising and marks, indicating that there is also the knowledge that torture is prohibited and worth concealing.

The presence of high-ranking officers in these cases studies is concerning. Detainees have reported Deputy Superintendents of Police (DSPs), Superintendents of Police (SPs) and the chiefs of local police stations as both having knowledge of and inflicting torture. When torture is not only condoned but also conducted by officers in leadership roles, a culture of impunity and acceptance of torture is established. With regard to torture, high-ranking officers must set a flawless example to their police staff. There are only 153 superintendents and 422 DSPs<sup>111</sup> in Nepal, with 72,024 staff below the rank of DSP.<sup>112</sup> If torture is tacitly or explicitly condoned by officers at SP or DSP level, it is likely the organisational culture and practices of the police sanction and enable torture.

Additionally, the use of a wide range of police facilities for torture, from police vans to District Police Offices, suggests that torture is not a particularly secretive practice. While some cases reported that torture stopped when the

<sup>111</sup> Organisational structure of Nepal Police.

<sup>112</sup> Ibid.

victim was transferred to District facilities, the same facilities were also used for torture in other cases. The recurrent and deliberate use of torture by the police thus appears to be systematic, in line with the definition of the Committee Against Torture that torture is systematic “when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question.”<sup>113</sup>

Approaches to ensuring compliance include proper criminalisation and punishment for torture, training security personnel in human rights and in proper investigative techniques. Additionally, institutions, governments and individual staff should inculcate particular norms and values against torture both in individual staff and across institutions. While legislative approaches are critical in providing tools and laws against impunity, and while monitoring is essential to both tracking and eliminating torture, changing organisational practices and culture is also important.

The practice of torture and the legal provisions regarding torture in Nepal also demonstrate continuing breaches of Nepal’s obligations under international human rights law. The domestic legal instruments engaging with torture do not establish it as a criminal offence, and in multiple other aspects are non-compliant with international law.

The legal landscape around torture in Nepal remains essentially unchanged. The 2014 Torture Bill remained in limbo. Major legislative changes that would replace Nepal’s *Muluki Ain* with separate penal and criminal procedure codes were proposed and consulted on in late 2015, but have not yet been tabled or passed. The CRT remains the only torture-specific Act that provides redress for torture victims, and it has been repeatedly criticised as insufficient and non-compliant by international and domestic human rights organisations. Nepal has failed to fully implement its international treaty obligations with regard to human rights, while the domestic laws around both torture and the governance of security services enable de facto and de jure impunity and do not provide sufficient strength in deterrence or punishment for human rights violations.

<sup>113</sup> UN CAT (2011), Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party, para. 97.



## RECOMMENDATIONS

Therefore, in summary, AF recommends the following to reduce and eliminate torture in Nepal;

- To combat impunity, ensure redress for victims of torture and provide a deterrent, **torture must be criminalised** and penalties established which are appropriate to the gravity of the crime. The Bill preventing torture and the proposed Penal Code changes should be amended in line with AF's prior recommendations, should be prioritised rather than delayed, and must be compliant with Nepal's international obligations.
- To ensure oversight of police behaviour in the absence of systematic monitoring, and to prevent coercion and torture, **all detainees should be given their constitutional right to access a legal representative**, who should be present during interrogation and should be able to witness and review a detainee's statement.
- To guarantee detainees' health and support the monitoring of torture, medical treatment should be explicitly made available to detainees upon request at any point in detention. **Check-ups should be held privately and confidentially**, and doctors should have the ability to confidentially inform a judge if torture is suspected.
- To build faith in the legal system and reduce impunity, **decisions of the courts with regard to compensation should be implemented**, and compensation should be readily available to victims. In line with UPR member recommendations and the NAPHR a central fund for torture compensation should be established to ensure compensation is available for victims.
- To protect juvenile detainees, **juvenile facilities must be made available** and the practice of holding juveniles with adults must be prohibited in law and in practice.
- To ensure accountability and a strong framework against torture, **Nepal should implement its international obligations**, ratify OPCAT as recommended by multiple UPR parties and the NHRAP and ensure the NHCR is well-resourced and independent.



# ANNEXES

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## DATA FROM JANUARY TO DECEMBER 2015

### *1 - Torture and CIDT information*

#### **a) Torture and CIDT information – Overall**

<b>Yes</b>	208	17.2
<b>No</b>	1004	82.8
<b>Total</b>	<b>1212</b>	<b>100.0</b>

#### **b) Torture and CIDT information – by District**

<b>District</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>	<b>Percentage</b>
Kathmandu	52	162	214	24.3
Morang	11	182	193	5.7
Banke	79	227	306	25.8
Kaski	33	127	160	20.6
Kanchanpur.	1	138	139	0,7
Rupandehi	11	90	101	10.9
Baglung	0	25	25	0
Myagdi	0	5	5	0
Parbat	1	10	11	9.1
Jhapa	20	38	58	34.5
<b>Total</b>	<b>208</b>	<b>1004</b>	<b>1212</b>	<b>17.2</b>

## c) Torture and CIDT information – by Charge

Charge	Yes	No	Total	%reporting torture
Public Offence	39	216	255	15.3
Attempt to Murder	9	54	63	14.3
No charge	13	106	119	10.9
Drug	57	240	297	19.2
Rape	8	62	70	11.4
Arms and Ammunition	2	4	6	33.3
Theft	47	109	156	30.1
Murder	17	24	41	41.5
Forest Offence	1	18	19	5.3
Gambling	0	15	15	0
Human Trafficking	7	34	41	17.1
Forgery	0	13	13	0
Traffic Murder	0	42	42	0
Cheating	0	22	22	0
Traffic Deformities	0	3	3	0
Kidnapping	5	2	7	71.4
Polygamy	2	29	31	6.5
Deformities	0	2	2	0
Arson	0	3	3	0
Abortion	0	3	3	0
Black Market	0	3	3	0
Unnatural Sex	1	0	1	100
<b>Total</b>	<b>208</b>	<b>1004</b>	<b>1212</b>	<b>17.2</b>
<b>Total (exc. charges not recorded in 2014)</b>	<b>208</b>	<b>1001</b>	<b>1209</b>	<b>17.2</b>

**d) Number of detainees – by Caste/Ethnicity**

<b>Caste/Ethnicity</b>	<b>Frequency</b>	<b>Percentage of total</b>
Brahmin	117	9.7
Chhetri	343	28.3
Newar	56	4.6
Indigenous	250	20.6
Terai Ethnic	193	15.9
Dalit	132	10.9
Others	80	6.6
Muslim	41	3.4
<b>Total</b>	<b>1212</b>	<b>100.0</b>

**e) Torture and CIDT information – by Caste/Ethnicity**

<b>Caste</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>	<b>Percentage reporting torture</b>
Brahmin	23	94	117	19.7%
Chhetri	47	296	343	13.7%
Newar	6	50	56	10.7%
Indigenous	58	192	250	23.2%
Terai Ethnic	28	165	193	14.5%
Dalit	23	109	132	17.4%
Others	17	63	80	21.2%
Muslim	6	35	41	14.6%
<b>Total</b>	<b>208</b>	<b>1004</b>	<b>1212</b>	<b>17.2%</b>

**f) Number of detainees – by gender**

Gender	Frequency	Percentage of total
Female.	138	11.4
Male.	1074	88.6
<b>Total</b>	<b>1212</b>	<b>100.0</b>

**g) Torture and CIDT information – by gender**

Gender	Yes	No	Total	Percentage reporting torture
Female	6	132	138	4.3
Male	202	872	1074	18.8
<b>Total</b>	<b>208</b>	<b>1004</b>	<b>1212</b>	<b>17.2</b>

**2 - Compliance****a) Reasons for arrest given**

	Frequency	Percentage of total
Yes	50	4.1
No	160	13.2
Given but after bringing in detention	1002	82.7
<b>Total</b>	<b>1212</b>	<b>100.0</b>

**b) Taken to court?**

	Frequency	Percentage
Yes	1093	90.2
No	119	9.8
<b>Total</b>	<b>1212</b>	<b>100.0</b>

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

		Frequency	Percent	Valid Percent
Valid	Yes	752	62.0	68.8
	No	341	28.1	31.2
	Total	1093	90.2	100.0
Not taken to court		119	9.8	
<b>Total</b>		<b>1212</b>	<b>100.0</b>	

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

	Frequency	Percent
Yes.	1187	97.9
No.	25	2.1
<b>Total</b>	<b>1212</b>	<b>100.0</b>

**e) Government food provided?**

	Frequency	Percent
Yes.	1177	97.1
No.	35	2.9
<b>Total</b>	<b>1212</b>	<b>100.0</b>

**f) Contact with family members?**

	Frequency	Percent
Yes.	988	81.5
No.	224	18.5
<b>Total</b>	<b>1212</b>	<b>100.0</b>

### 3 – Juveniles

#### a) Number of juveniles by gender

Gender	Frequency	Percent of juvenile detainees
Female	18	7.0
Male	239	93.0
<b>Total</b>	<b>257</b>	<b>100.0</b>

#### b) Torture and CIDT information – juveniles, by gender

Gender	Yes	No	Total	Percentage reporting torture
Female	0	18	18	0
Male	56	183	239	23.4
<b>Total</b>	<b>56</b>	<b>201</b>	<b>257</b>	<b>21.8</b>

#### c) Number of juveniles by caste

Caste	Frequency	Percentage of detainees
Brahmin	13	5.1
Chhetri	65	25.3
Newar	14	5.4
Indigenous	59	23.0
Terai Ethnic	42	16.3
Dalit	36	14.0
Others	20	7.8
Muslim	8	3.1
<b>Total</b>	<b>257</b>	<b>100.0</b>

**d) Torture and CIDT information – juveniles, by caste**

<b>Caste</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>	<b>Percentage reporting torture</b>
Brahmin	3	10	13	23.1
Chhetri	14	51	65	21.5
Newar	3	11	14	21.4
Indigenous	16	43	59	27.1
Terai Ethnic	6	36	42	14.3
Dalit	7	29	36	19.4
Others	5	15	20	25
Muslim	2	6	8	25
<b>Total</b>	<b>56</b>	<b>201</b>	<b>257</b>	<b>21.8</b>

**e) Torture and CIDT information – juveniles, by charge**

<b>Charge</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>	<b>% reporting torture</b>
Public Offence	15	48	63	23.8
Attempt to Murder	3	13	16	18.8
No Charge	6	22	28	21.4
Drug	9	40	49	18.4
Rape	1	25	26	3.8
Arms and Ammunition	1	0	1	100
Theft	17	43	60	28.3
Murder	1	2	3	33.3
Forest Offence	0	1	1	0
Human Trafficking	1	2	3	33.3
Cheating	0	1	1	0
Kidnapping	1	1	2	50
Polygamy	0	2	2	0
Arson	0	1	1	0
Unnatural Sex	1	0	1	100
<b>Total</b>	<b>56</b>	<b>201</b>	<b>257</b>	<b>21.8</b>



**f) Torture and CIDT information – juveniles, by place of detention**

<b>Location</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>	<b>% reporting torture</b>
Kathmandu	16	42	58	27.6
Morang	4	38	42	9.5
Banke	19	33	52	36.5
Kaski	10	27	37	27.0
Kanchanpur	0	23	23	0
Rupandehi	2	29	31	6.5
Baglung	0	3	3	0
Parbat	0	2	2	0
Jhapa	5	4	9	55.6
<b>Total</b>	<b>56</b>	<b>201</b>	<b>257</b>	<b>12.8</b>

**g) Torture and CIDT information – juveniles, by age**

<b>Age</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>	<b>% reporting torture</b>
10	1	0	1	100
11	0	1	1	0
12	0	5	5	0
13	1	7	8	12.5
14	2	11	13	15.4
15	8	31	39	20.5
16	15	30	45	33.3
17	10	41	51	19.6
18	19	75	94	20.2
<b>Total</b>	<b>56</b>	<b>201</b>	<b>257</b>	<b>21.8</b>

**h) Torture and CIDT information – juveniles, overall**

<b>Torture</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	56	21.8
No	201	78.2
<b>Total</b>	<b>257</b>	<b>100.0</b>

**4 – Juveniles/Compliance****a) Were you brought before a judge/competent authority within 24 hours of detention?**

	<b>Frequency</b>	<b>Percent</b>	<b>Percent of those taken to court</b>
Yes	154	59.9	67.2
No	75	29.2	32.8
Total	229	89.1	100.0
Not taken to court	28	10.9	
<b>Total</b>	<b>257</b>	<b>100.0</b>	

**b) Was reason for arrest given?**

	<b>Frequency</b>	<b>Percent</b>
<b>Yes</b>	<b>6</b>	<b>2.3</b>
No	46	17.9
Given but after bringing in detention	205	79.8
<b>Total</b>	<b>257</b>	<b>100.0</b>

**c) Did you have health check before detention?**

	<b>Frequency</b>	<b>Percent</b>
Yes.	252	98.1
No.	5	1.9
<b>Total</b>	<b>257</b>	<b>100.0</b>

**d) Was government food provided**

	Frequency	Percent
Yes.	247	96.1
No.	10	3.9
<b>Total</b>	<b>257</b>	<b>100.0</b>

**e) Contact with family members?**

	Frequency	Percent
Yes.	200	77.8
No.	57	22.2
<b>Total</b>	<b>257</b>	<b>100.0</b>

**f) Taken to court?**

	Frequency	Percent
Yes.	229	89.1
No.	28	10.9
<b>Total</b>	<b>257</b>	<b>100.0</b>

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

	Frequency	Percent	Percent of those taken to court
Yes	59	23.0	25.8
No	170	66.1	74.2
Total	229	89.1	100.0
Not taken to court	28	10.9	
<b>Total</b>	<b>257</b>	<b>100.0</b>	