

## Annex XIII

### **Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party**

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## **List of acronyms**

APF	Armed Police Force
CAT	Convention against Torture
CPA	Comprehensive Peace Agreement
CRT	Compensation relating to Torture Act 1996
FIR	First Information Report
NHRC	National Human Rights Commission
OHCHR	Office of the High Commissioner for Human Rights
RNA	Royal Nepalese Army
SSP	Special Security Programme
UCPN-M	Unified Communist Party of Nepal (Maoist)

## **Part 1**

### **Report on Nepal under article 20 of the Convention adopted by the Committee at its forty-sixth session (9 May–3 June 2011)**

#### **I. Introduction**

1. In accordance with article 20 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), if the Committee against Torture (hereinafter referred to as “the Committee”) receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned. The Committee may subsequently decide to designate one or more of its members to undertake a confidential inquiry which may include, with its agreement, a visit to the territory of the State party concerned. The proceedings of the Committee under these processes are confidential and at all stages the cooperation of the State party is sought. After the proceedings have been completed, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results in its annual report to the States parties to the Convention and the General Assembly and, if agreed with the State party, make public the present report and the replies of the State party.

2. Nepal acceded to the Convention on 14 May 1991. At the time of ratification it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention, as it could have done under article 28 of the Convention. The procedure under article 20 is, therefore, applicable to Nepal.

#### **II. Development of the procedure**

3. In its concluding observations on the second periodic report of Nepal, adopted at its thirty-fifth session in November 2005,<sup>1</sup> the Committee expressed serious concerns about allegations concerning the widespread use of torture, the prevailing climate of impunity for acts of torture and the lack of a legal provision in domestic law to make torture a criminal offence.

4. At the time, the Committee was “gravely concerned about the exceedingly large number of consistent and reliable reports concerning the widespread use of torture and ill-treatment by law enforcement personnel, and in particular the Royal Nepalese Army, the Armed Police Force and the Police, and the absence of measures to ensure the effective protection of all members of Society”. It was concerned about “the extensive resort to pre-trial detention lasting up to 15 days”<sup>2</sup> and “the contemptuous lack of compliance with court orders by members of security forces”.<sup>3</sup> The Committee was “deeply disturbed by the continuing reliable allegations concerning the frequent use of interrogation methods by security forces that are prohibited by the Convention”.<sup>4</sup> It recommended the State party to “publicly condemn the practice of torture and take effective measures to prevent acts of

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<sup>1</sup> CAT/C/NPL/CO/2, paras. 12, 13, 24 and 25.

<sup>2</sup> Ibid., para. 14 (b).

<sup>3</sup> Ibid., para. 16.

<sup>4</sup> Ibid., para. 20.

torture in any territory under its jurisdiction” and to “take all measures, as appropriate, to protect all members of society from acts of torture.”<sup>5</sup>

5. The Committee was further concerned “about the prevailing climate of impunity for acts of torture and ill-treatment and the continued allegations of arrests without warrants, extrajudicial killings, deaths in custody and disappearances” as well as “about the lack of an independent body able to conduct investigations into acts of torture and ill-treatment committed by law enforcement personnel” and thus recommended the State to “send a clear and unambiguous message condemning torture and ill-treatment to all persons and groups under its jurisdiction” and that it “should take effective legislative, administrative and judicial measures to ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances are promptly investigated, prosecuted and the perpetrators punished” as well as to “establish an independent body to investigate acts of torture and ill-treatment committed by law enforcement personnel”.

6. The Committee was also concerned “that the definition of torture in article 2 (a) of the Compensation Relating to Torture Act of 1996, the lack of a legal provision in current domestic law to make torture a criminal offence and the draft Criminal Code are not in line with the definition of article 1 of the Convention against Torture”. It recommended that the State party “adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention. The State party should provide information to the Committee on domestic jurisprudence referring to the definition of torture as per article 1 of the Convention.”

7. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (hereafter “Special Rapporteur on the question of torture”), following a visit to Nepal in September 2005, concluded, inter alia, that “torture is systematically practised by the police, armed police and Royal Nepalese Army. Legal safeguards are routinely ignored and effectively meaningless. Impunity for acts of torture is the rule, and consequently victims of torture and their families are left without recourse to adequate justice, compensation and rehabilitation.”<sup>6</sup>

8. In addition to this, at its thirty-seventh session in November 2006, in private meetings, the Committee considered information submitted to it by non-governmental organizations (NGOs) on alleged systematic practice of torture in Nepal. It appeared to the Committee that this information submitted to it under article 20 of the Convention was reliable and that it contained well-founded indications that torture was being systematically practised in the territory of Nepal. In accordance with article 20, paragraph 1, of the Convention and Rule 82 of its Rules of Procedure,<sup>7</sup> the Committee decided to invite the State party to cooperate in the examination of such information, a copy of which was sent to the State party on 5 April 2007, and to submit its observations in that regard to the Committee by 30 April 2007.

9. On 19 April 2007, the Permanent Mission of Nepal acknowledged receipt of the Committee’s request for observations on the information submitted to it. However, the State party did not provide such information by 30 April 2007 as requested by the Committee. The Committee sent reminders to the State party on 16 September 2008 and on

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<sup>5</sup> Ibid., para. 13.

<sup>6</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (E/CN.4/2006/6/Add.5) of 9 January 2006, para. 31.

<sup>7</sup> CAT/C/3/Rev.5.

15 January 2009. On 19 November 2008 the Chairman of the Committee met with the permanent representative of Nepal in Geneva regarding this issue.

10. On 3 April 2009, Nepal transmitted its observations to the Committee and requested that the procedure be dismissed. In its observations, the State party stated that the reports which were at the origin of the Committee's decision to conduct an inquiry were sporadic reports describing the situation at the time of the conflict and were intended to support a campaign against Nepal going beyond the agenda of protection and promotion of human rights. The State party drew the Committee's attention to the speedy and dynamic transformation which had taken place in Nepal following the end of the conflict and the State party's strong commitment to address human rights violations and adopt the necessary legislative and governmental measures to end impunity. This information was examined by the Committee at its forty-second and forty-third sessions, in private meetings.

11. In view of all the information before it, the Committee decided to undertake a confidential inquiry in accordance with article 20, paragraph 2, of the Convention and designated Felice Gaer and Luis Gallegos Chiriboga for that purpose. On 30 November 2009, the Committee transmitted this decision to the State party, inviting Nepal, in accordance with article 20, paragraph 3, of the Convention, to cooperate with the Committee in the conduct of the inquiry, as well as proposing specific dates for a visit (between 1 and 15 July 2010) of the designated members of the Committee to Nepal. On 15 February 2010, the Committee transmitted to the Permanent Mission its General Principles guiding visits under article 20 of the Convention. In a note verbale dated 9 March 2010, Nepal informed the Committee that "in the context of the ongoing peace process in the country and in particular the focused attention of the Government towards the promulgation of the Constitution to be made by the elected Constituent Assembly, the deadline of which was approaching,<sup>8</sup> the concerned authorities [were] not in a position to receive the delegation of experts from the Committee for the purpose of the inquiry at this stage". It further assured the Committee of its "willingness to work closely in a spirit of constructive dialogue and cooperation with the Committee". The State party requested a meeting between the Nepal Permanent Mission in Geneva and the Committee's Chairperson, which took place on 3 May 2010.

12. In May 2010 two NGOs, Advocacy Forum and REDRESS, submitted further information<sup>9</sup> to the Committee on the alleged systematic practice of torture in Nepal, requesting the Committee to examine the situation in Nepal under article 20 of the Convention, which the Committee examined in private meetings at its forty-fourth session. At that session, the Committee also decided to continue to seek the cooperation of the State party, thus continuing its dialogue with it, in order for Nepal to accept the visit in question. On 29 June 2010, the Chairperson of the Committee met again with the Deputy Permanent Representative of Nepal on this issue.

13. At its forty-fifth session, in November 2010, the Committee decided that, as its continuing efforts to visit the State party were unsuccessful, it would proceed with the confidential inquiry without a visit and that the designated members of the Committee should prepare a report on Nepal under article 20 and report to the Committee at its forty-sixth session. On 28 January 2011, the Committee indicated this decision to the State party and reiterated that Nepal may submit to the Committee, at any stage of the proceedings, according to article 20, paragraph 5, of the Convention against Torture, any information it deems relevant, in order to cooperate with the Committee in the inquiry.

14. The Committee notes that despite its numerous efforts to solicit cooperation and comments from Nepal in the context of its inquiry pursuant to article 20, Nepal provided

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<sup>8</sup> The deadline for drafting the Constitution was initially set to 28 May 2010.

<sup>9</sup> "Submission to the Committee against torture under article 20", Advocacy Forum and REDRESS, 5 March 2010.

information to the Committee on only one occasion, in April 2009, and did not avail itself of the opportunity it was offered to clarify the situation by accepting a visit of the Committee members undertaking the inquiry that would enable the Committee to form its view on the state of human rights protection in Nepal based on direct sources of information.

### **III. Background information**

15. In 2006 a Comprehensive Peace Agreement ended a decade-long conflict between the Maoists, the Government and monarchy, and a popular pro-democracy uprising in Nepal that claimed over 13,000 lives and displaced thousands more. An Interim Constitution was adopted in January 2007 and a Constituent Assembly was elected on 10 April 2008. At its first session of 28 May 2008, the Assembly voted to end the 239-year-old Monarchy of Nepal and to establish a Republic. In August 2008, a new Government, led by the Communist Party of Nepal (Maoist) (hereafter UCPN-M) was formed. The coalition Government collapsed in May 2009 and the Prime Minister resigned. A new Government was formed later that month consisting of a 22-party coalition led by the UCPN-M. On 30 June 2010, Prime Minister Madhav Kumar Nepal resigned, leaving the coalition government with no leadership. On 3 February 2011, Jhalnath Khanal, chairman of the UCPN-M, was elected as the new Nepal Prime Minister. Nepal thus was without an effective Government from June 2010 until February 2011.

16. The Constituent Assembly, which also functions as the Legislature-Parliament during the transitional period, has focused almost exclusively on the Constitution-drafting process. The rules of procedure of the Constituent Assembly were adopted in November 2008 following six months of deliberations. The rules establish a 61-member Constitutional Committee which has the core responsibility of preparing a draft Constitution. After the Constituent Assembly failed to meet an initial 28 May 2010 deadline to promulgate a new constitution, its term was extended for another year, to May 2011.<sup>10</sup>

### **IV. Torture in Nepal**

17. The Committee's present report addresses the reply of the State party dated 3 April 2009 and subsequent information provided by representatives of the Delegation of Nepal in bilateral meetings with the Committee's chairperson. This report also takes into account the report by the then Special Rapporteur on the question of torture, Manfred Nowak, following a mission to Nepal from 10 to 16 September 2005, and the follow-up reports of his successors, including the 4 March 2011 report of Juan E. Méndez.<sup>11</sup> The present report also takes into account the submissions of stakeholders and the United Nations to the universal periodic review of Nepal, which took place on 25 January 2011; information provided by the Office of the High Commissioner for Human Rights; reports from the Nepal National Human Rights Commission; and submissions from non-governmental organizations, including Advocacy Forum (AF), REDRESS, the Centre for Victims of Torture Nepal, the Asian Legal Resource Centre, Human Rights Watch and Amnesty International. The Committee's report addresses a period of inquiry from 2007 until the present.

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<sup>10</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal (A/HRC/10/53), 3 March 2009.

<sup>11</sup> Follow-up report of the Special Rapporteur on torture (A/HRC/16/52/Add.2).

## **A. Observations of Nepal in response to the Committee's decision to initiate the procedure under article 20**

18. On 3 April 2009, two years after the Committee's invitation to cooperate with the procedure initiated under article 20 of the Convention, the State party transmitted its observations to the Committee.

19. The State party argued that the Committee's decision to initiate a confidential procedure under article 20 of the Convention seemed to have been based on sporadic reports that were published during the armed conflict, and which have been largely commented upon by the State party with the concerned stakeholders. It considered that in large part, such reports were published in the framework of a campaign against Nepal going beyond the agenda of protection and promotion of human rights. The State party therefore asserted that such propaganda should not mislead the Committee and should not constitute part of any credible procedure of human rights treaty bodies in order for them to maintain the credibility of independence, impartiality and freedom from any kind of influence, be it emanating from the State or international organizations or individuals or entities claiming to be acting on others' behalf. Through its observations, the State party aimed at demonstrating the progress made since the publication of such reports.

20. After describing the political context in Nepal, including the peace process initiated with the signature of the Comprehensive Peace Agreement (CPA), the State party explained that the cessation of hostilities put an end to conflict-related violations, including alleged extrajudicial executions, detention, torture and ill-treatment in army barracks of those suspected of links with UCPN-M. Any alleged violations of international humanitarian law (hereafter "IHL") also ceased. The alleged incidents of disappearances were ended. All detainees or prisoners held in preventive detention under the Public Security Act or Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) or who were facing charges were released.

21. The State party emphasized that human rights have been placed at the centre of Nepal's peace process. In the "12-point Agreement" the Seven Party Alliance (SPA) and the UCPN-M expressed their commitment to "fully respect the norms and values of human rights". Two-thirds of the provisions of the Ceasefire Code of Conduct refer to international humanitarian law and human rights concerns. An eight-point Agreement between the Government and UCPN-M (signed on 16 June 2006) expresses strong commitment to "democratic norms and values including competitive multi-party system, civil liberties, fundamental rights, human rights, press freedom, and the concept of the rule of law". The State party added that it was committed to end impunity and make accountable those involved in the incidents of human rights violations. In this regard it had taken immediate action in several of the incidents.

22. The State party explained that the Interim Constitution of 15 January 2007 prohibits torture or cruel, inhuman or degrading treatment or punishment and provides constitutional guarantees to any person taken into custody. Any person, who suffered from torture or ill-treatment, shall be compensated under the law. The Interim Constitution also prohibits incommunicado detention. The State party argued that incommunicado detention is not practised in the country. The State party added that, during the armed conflict, some detainees were kept in army barracks for their own security due to a lack of civilian detention facilities, which is no longer the case. As for the prospect of criminalizing torture, the State party stated that it is in progress and foreseen by the Interim Constitution. The State party also mentioned that the Compensation Relating to Torture Act (CRT) was being implemented since 1996 and is in conformity with the provisions of the Convention.

23. Regarding alleged perpetrators of acts of rape and other crimes, the State party submitted that the Military Act of 1959 provides that they should be tried by civilian courts according to ordinary criminal procedural laws. Human rights violations such as acts of torture and enforced disappearance are also investigated by a civilian authority headed by the Deputy Attorney General and should be heard by a special court presided over by the Judge of the Appellate Court. Crimes committed by Army personnel relating to public interests<sup>12</sup> are investigated by an investigation committee constituted by the Government and the matter is not precluded from being tried by civilian courts on the mere account that the perpetrator is a member of the army.

24. With regard to the Truth and Reconciliation Commission and the Commission on the Inquiry into Disappearances, the State party noted that they were being established; and that both of these Commissions would not only investigate cases of human rights violations, but also provide a unique opportunity for social reconciliation.

25. The State party emphasized that it has a proud tradition of working closely with the international community, including United Nations human rights mechanisms; that it had ratified a number of human rights instruments, had allowed visits of Human Rights Council mandate holders and the High Commissioner for Human Rights; and it had given full access to OHCHR to fulfil its mandate.

26. Regarding the allegation of systematic practice of torture in Nepal, the State party considered that the Committee based its decision to initiate an inquiry procedure, mainly on the report of the Special Rapporteur on the question of torture (November 2005), which was drafted in the context of the violent armed conflict in the country, and other “sporadic” NGO reports. The State party considers that the information contained therein tried to amplify the situation in a disproportionate manner. It expressed its unequivocal commitment to the rule of law and under no circumstance condones the practice of torture. According to the State party, the myth of “systematic practice of torture” is essentially an unfair and unilateral story created against Nepal. On 29 November 2005, the State party had responded with its views on the draft concluding observations of the Committee following its consideration of Nepal’s periodic report. Earlier too, it had comprehensively clarified the matter through the replies to the list of the issues sent by the Committee. Similarly, in December 2005, Nepal responded to the draft report of the Special Rapporteur on torture after his visit to Nepal. As, in the State party’s opinion, the Special Rapporteur’s interpretation of the situation did not correspond to reality, the State party categorically rejected his conclusion of “systematic practice of torture” and provided explanation on the points he had raised in the report. The State party deplored the fact that its views were not properly reflected when the final report of the Special Rapporteur’s visit was produced.

27. The State party insisted that personal opinions reportedly expressed in private by some security officials cannot be generalized as a State policy of practising torture. Isolated incidents, if any, during the time of the armed conflict, cannot be generalized as an outcome of deliberate State policy. Nepal neither condones torture nor is it a State policy to let the perpetrators go with impunity. Instead, Nepal always takes seriously any allegation of torture and the persons found guilty of committing torture are brought to justice promptly. Actions have been taken against a number of security officials in this regard. Nepal Police has taken action against 21 personnel in 11 cases relating to torture. Out of those, 6 cases were prosecuted in the court of law. Similarly, the Nepal Army has also punished 6 army personnel in torture-related cases occurred during the conflict.

28. The State party also stated that it has implemented most of the recommendations formulated by the Special Rapporteur on the question of torture and those in the concluding observations of the Committee. For example, ever since the conclusion of the CPA on 21

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<sup>12</sup> The State party does not specify the meaning of “public interests” in this particular context.

November 2006, the Nepal Army had not been involved in any law enforcement activities nor has it been accused of any human rights violations. The army has issued policy directives regarding the promotion and protection of human rights. Commensurate institutional arrangements had been put into place to make sustained efforts for the integration of human rights principles and values in the entire set up of security agencies. A zero-tolerance policy had been applied against any violations of human rights and international humanitarian laws. With the exception of counter-insurgency operations between 2001 and April 2006, the Nepal Army had not been involved in regular law enforcement activities and there exist no allegations of human rights violations against it before and after that period. Therefore, any isolated incidents of human rights violations attributed to the Nepal Army during the time of conflict were neither policy-driven nor an outcome of a deliberate action.

29. The State party assured that extra caution and vigilance were maintained all along the counter-insurgency operations with a view to protect international human rights law (hereafter "IHRL") and respect IHL. In the context of the armed conflict, the Chief of the Army Staff issued various directives, instructions and orders to the Nepal Army to ensure that IHRL and IHL were fully understood, disseminated and respected at all levels. The directive issued on 12 March 2004 outlined clear instructions on respect for IHRL and IHL codes of conduct during security operations. It outlined the arrest procedure; search procedure; standard operating procedures in checkpoint duties; the status of arrested persons; the procedure to be followed after their arrest; security of arrested persons/detainees; evacuation of detainees; the behavior to be observed with detainees; the use of firearms/weapons; the provision of rations, clothing, medical and other facilities to detainees; cooperation with the International Committee of the Red Cross (ICRC). The directive further emphasized that commanders at all levels were responsible and accountable for strictly implementing human rights and humanitarian law directives in their respective commands; commanders had the responsibility to provide adequate briefing to the troops on IHRL and IHL prior to all operations, and a debriefing was also necessary after each operation; court rulings on human rights violations should be disseminated by the Judge Advocate General Branch to the concerned units; commanders should sensitize their troops on IHRL and IHL on a regular basis; Human Rights Cells shall be established at the Division and Brigade headquarters.

30. In order to further streamline respect for human rights and international humanitarian law within the Nepal Army in times of conflicts, the then Chief of the Army Staff issued another directive on 10 January 2005 to all Branches, Directorates, Formations and Services of the Army. This directive provided clear instructions regarding judicial proceedings on issues of human rights and IHL during military operations. Following the People's movement and just before the conclusion of the CPA, on 14 September 2006, the newly appointed Chief of Army Staff, while reaffirming the previous directives, issued a comprehensive set of instruction to all branches, directorates, formations and services. This instruction not only contains the strong and total commitment of the high commanding level of the Nepal Army to the promotion and protection of human rights, but it also demonstrates the sensitivity and compliance of the norms and values of human rights and international humanitarian law in the entire working system of the Nepal Army. On 22 February 2008, the Chief of the Army Staff issued an order for the integration of international human rights and international humanitarian law in all its working methods. The Nepal Army, in collaboration with the ICRC and the Kathmandu School of Law, is engaged at present in developing a manual on human rights and international humanitarian law. These measures and precautions taken, even at the time of the armed conflict, show the lack of tolerance towards human rights violations, including torture.

31. The Human Rights Cell at the Army Headquarters has been upgraded to a Human Rights Directorate and each Division and Brigade Headquarters of the Army now contains

a Human Rights Division and a Human Rights Cell respectively, as an integral component of its institutional architecture. Human Rights Cells are being established at Battalion as well as at Company level. A comprehensive two-fold human rights directive has been issued at the platoon level with a view to ensure respect of human rights and IHL.

32. The Nepal Army has conducted investigations into human rights violations, which allegedly occurred during the conflict, and through legal procedures provided by the Interim Constitution and relevant laws of Nepal, discharged the following sentences to the army personnel of various ranks: 118 sentences to imprisonment (from 1 month to 10 years); 62 discharges from service; 40 demotions; 23 forfeits of grades; 26 forfeits of promotions; 8 warnings; and 8 sentences to pay compensation to families of victims. An outline of each case and action taken against the army personnel found guilty has been provided by the State party in an annex to its observations. The State party considers that this list demonstrates scrupulous attention paid by the Nepal Army to take each and every incident of human rights violations involving Nepal Army personnel seriously, and to investigate and sentence the perpetrators. The State party further considers this list as reflecting its zero tolerance policy towards human rights violations even if minor human rights violations occurred despite such policy.

33. The State party further states that the Human Rights Unit of the Nepal Police monitors operational activities of the police and issues necessary directives and instructions to all of its units. It also administers internal investigation upon the receipt of human rights complaints. According to the State party, action has been taken against perpetrators who have been found guilty of human rights violations. A regular well-functioning mechanism has been developed within the Nepal Police to respond and investigate allegations of human rights violations involving police personnel of all ranks. From 15 July 2007 to 14 July 2008, the Human Rights Unit of the Nepal Police responded to 1,005 complaints of all types related to human rights received from national and international human rights organizations. So far, actions have been taken against 318 police personnel of various ranks. During that period alone, i.e. from 15 July 2007 to 14 July 2008, actions were taken against 93 police personnel for human rights violations in the course of their duties.

34. The State party states that the authorities have maintained custody registers in police stations and prisons. The Appellate Court and the Chief District Officer are empowered to access the register at any time. Maintenance of custody registers is being made more systematic and detailed so that it reflects the detailed particulars of detainees and their release or transfer. The NHRC, OHCHR and the ICRC have been given unhindered access to prisons and places of detention with all requisite cooperation on the part of the government. The Interim Constitution guarantees the independence of the judiciary and the right of a person to seek remedy of *habeas corpus*. Every detainee has a guaranteed right to seek constitutional remedy and ascertain the legality of his/her detention.

35. The State party further argues that every person taken into custody is brought for a medical check-up and the same process is repeated when the person is being sent to the prison according to the order of the competent court. If any police personnel are involved in torture, the case is immediately investigated and the perpetrator is punished. Similarly, the NHRC has forwarded 5 cases of compensation in favor of victims of torture to the Government, on the basis of NHRC Regulation, 2000. The victims are in the process of receiving compensation. In addition, 13 cases forwarded by the NHRC for compensation have already been compensated.

36. The State Litigation Act, 1993 clearly provides that investigation of criminal cases has to be carried out with the direct involvement and under the supervision of District Attorneys. Detainees have been guaranteed the right to consult with the lawyer of their choice. Article 135 of the Interim Constitution empowers the Office of the Attorney General to investigate any complaints or allegations of torture and ill-treatment.

Compensation has been provided to victims of torture as directed by a court of law. The internal process for the ratification of the Rome Statute is ongoing. The NHRC has been granted “A” status and has acquired constitutional status under the Interim Constitution, 2007. The head of the commission as well as other commissioners have been appointed. Its financial resources have doubled and the State party has been implementing the recommendations of the NHRC and continues to be committed to cooperating with the work of the Commission.

37. The Ministry of Home Affairs issued guidelines on human rights for its law enforcement officials. The guidelines target Chief District Officers, Prison Officials, Immigration Officials as well as Nepal Police and Armed Police Force officials. The Ministry regularly monitors the implementation of those guidelines and does the necessary follow up. Nepal has been implementing the National Human Rights Action Plan (NHRAP) since 2004 and, in 2008, following a comprehensive review of the same to align it with the realization of economic, social and cultural rights in general and the Millennium Development Goals in particular, another three-year NHRAP has been adopted which is presently under implementation. The reformulated NHRAP includes, among others, separate chapters on Prison Management and Reform. This has introduced a human rights-based approach to national development efforts.

38. A high number of awareness-raising and sensitization programs were launched for security personnel on the importance of complying with the provisions of the Convention when dealing with law and order situations. The visit to Nepal of the Special Rapporteur on the question of torture and the submission of Nepal’s second periodic report for its examination by the Committee, were some of the examples of the State party’s efforts to honor its commitments under the Convention. Even during the time of conflict, Nepal responded in an open manner to reported cases of torture received through the Special Rapporteur on the question of torture. The practice of torture as a resort to extract confessions or solicit information from detainees or for any other purposes is strictly prohibited by Nepali law and such confessions are not admissible as legitimate evidence before a court of law. The State party insists that it has no policy to allow torture as a method of criminal investigation.

39. On the vetting of security personnel, the State party emphasized that it had introduced such a system on its own initiative. Since 15 May 2005, the Nepal Army had implemented the policy that those who are found guilty of human rights violations are disqualified from participating in United Nations peacekeeping missions.

40. The State party therefore did not agree with the allegation of “systematic practice of torture” in Nepal and firmly rejected it. It was also of the view that individual remarks reportedly made by some officials in private should not be generalized as a state policy and that to conclude that there is a widespread use of torture, merely on the basis of a number of allegations is exaggerated and does not recognize the efforts made by national authorities to fight against such crime. On the basis of the observations outlined above, the State party requested the Committee to withdraw the inquiry procedure.

## **B. Information received from United Nations sources, non-governmental organizations, and national human rights institutions**

### **1. The practice of torture and extrajudicial killings**

#### **(a) United Nations sources**

41. According to the 2009 OHCHR report, during the period under review OHCHR Nepal documented 93 cases of torture and ill-treatment, as well as a number of cases of unlawful

detention. Generally, allegations of illegal detention, ill-treatment, torture and other related violations were made against the Nepal Police (NP) and forest officials. Allegations against members of the Armed Police Force (APF) and the Nepal Army (NA) mostly involved claims of excessive use of force occasionally amounting to extrajudicial killings in controlling law and order situations and alleged poaching in national parks respectively.

(i) *Widespread torture, particularly during interrogation*

42. The 2009 report of the United Nations High Commissioner for Human Rights on the human rights situation in Nepal<sup>13</sup> states that reports of ill-treatment sometimes amounting to torture were widespread, especially during interrogation. In his follow-up report of 4 March 2011, the Special Rapporteur on the question of torture also found that reports of beatings and ill-treatment sometimes amounting to torture were widespread in Nepal, especially during interrogation.<sup>14</sup>

43. The Special Rapporteur noted with concerns the reports of discriminatory targeting of detainees from certain ethnic minorities and lower castes, as well as the reported cases of torture in the Southern part of Nepal.<sup>15</sup> He further notes that police continue to use torture in all parts of the country to coerce confession during interrogation.<sup>16</sup>

(ii) *Torture of children in custody*

44. The Special Rapporteur reported that 25.5 per cent of juveniles held in police custody from October 2008 to June 2009 claimed they were tortured or ill-treated. While this figure was 3.3 per cent lower than that documented in the period from January to September 2008, it remained significantly higher than the rate for the adult population (18.8 per cent). The Special Rapporteur cautioned that the Nepal's continued detention of juveniles in facilities meant for adults presented grave human rights concerns, as children housed with adult offenders are vulnerable to rape and other abuses.<sup>17</sup>

(iii) *Incommunicado detention*

45. A joint study issued by United Nations experts on 19 February 2010 on global practices in relation to secret detention in the context of counter terrorism<sup>18</sup> addresses practices of ill-treatment in secret detention places. The joint study particularly referred to two OHCHR reports on ill-treatment of detainees in two secret detention sites within Nepal Army barracks, the Maharajgunj barracks in Kathmandu (2006) and Chisapani barracks in Bardiya district (2008).

46. In 2007, following the end of the armed conflict, OHCHR documented several cases of detainees accused of belonging to armed groups being held for short periods in unacknowledged, incommunicado detention, in the worst case for 11 days.<sup>19</sup> In June 2007, the Supreme Court of Nepal issued a ground-breaking judgement in response to petitions for the writ of habeas corpus in dozens of cases, ordering the Government to establish a

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<sup>13</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal (A/HRC/10/53), 3 March 2009.

<sup>14</sup> Follow-up report of the Special Rapporteur on torture, A/HRC/16/52/Add.2.

<sup>15</sup> Ibid., p. 170.

<sup>16</sup> Ibid., p. 177.

<sup>17</sup> Ibid., p. 188.

<sup>18</sup> Joint Study on Global Practices in relation to Secret Detention in the Context of Terrorism of the Special Rapporteur on the promotion and protection of human Rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on Arbitrary Detention, represented by its vice-chair, Shaheen Sardar Ali; and the Working Group on Enforced or Involuntary Disappearances represented by its chair, Jeremy Sarkin ( A/HRC/13/42), para. 182.

<sup>19</sup> Ibid., para. 186.

Commission of Inquiry into Disappearances complying with international standards, to enact a law to criminalize enforced disappearances, to prosecute those responsible for past disappearances and to compensate families of victims. However, in his 2011 follow-up report, the Special Rapporteur on the question of torture stated that police regularly deny that suspected members of armed groups are in police custody and hold individuals incommunicado for multiple days before acknowledging that they are in detention or granting organizations such as OHCHR or the NHRC access to them. The Special Rapporteur regretted that the State party had not taken steps to make incommunicado detention and secret detention illegal and called upon the State party to release immediately the reported large number of detainees held arbitrarily by APF at unknown locations.<sup>20</sup>

(iv) *Abuses in the Terai region*

47. In its Summary of Concerns (July 2010), OHCHR investigated allegations of extra-judicial killings<sup>21</sup> in the Terai region, focusing exclusively on allegations related to unlawful means used by security forces during their operations, resulting in the deaths of civilians. The Government introduced the Special Security Plan (hereafter “SSP”) at the end of July 2009. Despite the fact that the SSP incorporates a commitment to protecting human rights, credible allegations of unlawful killings have continued to surface, most of which, according to information received by OHCHR, had been left uninvestigated. In its report as well as in previous investigations, OHCHR documented a pattern in which security forces resort to the use of excessive and sometimes unwarranted lethal force during their operations. Additionally, the United Nations Country Team in Nepal has objected to the lack of criminal prosecutions against alleged perpetrators of such acts.

48. The 2010 OHCHR Summary of Concerns particularly addresses cases in which a death occurred after a person was taken under the control of Nepal Police, Armed Police Force or Nepal Army personnel, or where a person was killed during a security forces’ operation at a time when the person did not pose a serious threat to life and where other means for law enforcement were available. These allegations often contradict official accounts that the person died as a result of cross-fire during an encounter. Between January 2008 and June 2010, OHCHR received reports of 39 incidents, resulting in 15 deaths, which involved credible allegations of the unlawful use of lethal force. All but two of these incidents allegedly took place in the Terai districts of the Eastern and Central Regions. First Information reports (FIR, the initial complaint to the police which formally initiate the investigations) initiated by relatives were registered in a few cases. In several cases, the police claim to have initiated their own investigations. However, none of these investigations have resulted in serious disciplinary or criminal action against the alleged perpetrators.

(v) *Failure of safeguards intended to protect against torture*

a. Records of detention

49. In his 2011 follow-up report, the Special Rapporteur on the question of torture stated that detainees in police custody continue to be held beyond the 24-hour period permitted by law and that the police continue to keep inaccurate records of detention in which they

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<sup>20</sup> Follow-up report of the Special Rapporteur on the question of torture (A/HRC/16/52/Add.2), p. 170.

<sup>21</sup> According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, an extrajudicial killing may be defined broadly as any killing that violates international human rights or humanitarian law, including “unlawful killings by the police”, “deaths in military or civilian custody” and “patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities”, report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the situation in the United States of America (26 May 2009), (A/HRC/11/2/Add.5), para. 3.

falsify the date of arrest.<sup>22</sup> A lack of accurate record-keeping in many prisons and police detention facilities makes it difficult to hold police personnel accountable for these violations.<sup>23</sup> According to the Police Act, police authorities are obliged to maintain a standardized register indicating all complaints and charges, names of the arrested persons, names of the complainants, the offence for which persons were arrested, the arms or property recovered from them or from other sources, as well as names of the witnesses summoned. However, the practice of using ad-hoc registers and notebooks instead still remains a problem. The police often do not record the actual date of arrest in order to adjust it to give the impression the 24-hour limitation has been complied with. In cases where a detainee is released within a couple of hours or in the first few days after the arrest, records of it are not being kept. In addition, access to relatives and lawyers is normally granted only when detainees are brought before a court.<sup>24</sup>

b. Required medical examinations of detainees

50. The 2009 OHCHR report mentioned that detainees in police custody, including those who had been abused, often went without medical care; and health examinations were poorly documented. Although detainees increasingly reported being taken for medical examination at the time of arrest in cases brought under the Compensation relating to Torture Act of 1996 (CRT), OHCHR expressed serious concerns regarding the quality of these examinations. Often, junior staff members were assigned the task of conducting medical check-ups of detainees brought to the hospital by police, and members of the police often insisted on staying with the patient while he/she was being examined, claiming a risk of escape. Detainees were rarely taken for examination at the time of transfer to the prison or at the time of release, despite the fact that such examinations are crucial in order to determine whether possible physical injuries or mental suffering were sustained during the individual's time in custody. Additionally, quite commonly, doctors underreported injuries out of concern for their own security and fear of reprisals. OHCHR determined that medical check-ups were mere formalities as police routinely took a group of detainees to a doctor, who simply asked whether they had any injuries or internal wounds and failed to physically examine them. OHCHR further found that doctors often fail to provide courts with adequate descriptions of detainees' medical condition as they fear being threatened by the police and Chief District Officers if they are to provide an adequate medical report.<sup>25</sup>

c. Prohibition of the use of self-incriminatory statements obtained by force in court proceedings

51. The Special Rapporteur on the question of torture noted that although under the CRT and Evidence Act, self-incriminatory statements obtained by force are inadmissible in court proceedings, police continue to use torture to coerce confessions, and judges do not generally restrict the admissibility of evidence obtained during interrogation in absence of the lawyer and rarely ask detainees whether their statements were given freely. Confessions remain the central piece of evidence in most cases. Therefore, incidents of beatings and ill-treatment during interrogation remain widespread.<sup>26</sup> It is very common for detainees to be forced to sign statements without being able to read them beforehand. This is sometimes due to illiteracy but mainly because the police refuse to give detainees an opportunity to read their statement. Further, although the prosecution carries the burden of ultimately proving a defendant's guilt, each defendant has to "persuade" the court of the "specific fact" that a statement was not freely given (Section 28, State Cases Act). In practice, this

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<sup>22</sup> Follow-up report of the Special Rapporteur on torture, A/HRC/16/52/Add.2, p. 174.

<sup>23</sup> *Ibid.*, pp. 174–175.

<sup>24</sup> *Ibid.*, pp. 175–176.

<sup>25</sup> *Ibid.*, p. 179.

<sup>26</sup> *Ibid.*, p. 177.

means that forced confessions are routinely accepted unless the defendant is able to produce some compelling evidence demonstrating that coercion or torture took place.<sup>27</sup> Moreover, the Special Rapporteur noted that there is no provision for video and audiotaping of interrogations in Nepal.<sup>28</sup>

d. Lack of investigations into allegations of inhumane treatment of persons in custody

52. The Special Rapporteur further noted that although article 135, paragraph 3(c), of the Interim Constitution gives power to the Attorney General's Office to investigate allegations of inhumane treatment of any person in custody and gives the necessary directions under the Constitution to the relevant authorities to prevent the recurrence of such a situation, prosecutors and judges rarely question detainees brought before them about their treatment in police custody. While he acknowledged that judges and court staff have recently tended to be more cooperative with victims of torture and lawyers, he noted that in many cases, judges rely solely on police reports in reaching determinations and do not even require the accused to be physically present.<sup>29</sup>

**(b) Non-governmental organizations and national human rights institutions**

53. After the Committee had initiated the confidential procedure under article 20, it also received a number of additional well-documented reports from NGOs, including Advocacy Forum (AF), REDRESS, the Centre for Victims of Torture Nepal, the Asian Legal Resource Centre, Human Rights Watch and Amnesty International, on the human rights situation in Nepal and the major concern of widespread torture, particularly in police custody. A number of reports were also received in the context of the Committee's drafting of its list of issues prior to reporting to Nepal in November 2010. In May 2010, while the confidential procedure under article 20 had already been initiated, the NGOs REDRESS and Advocacy Forum drew the Committee's attention to major concerns of widespread torture and therefore requested that the Committee initiate a confidential procedure pursuant to article 20 of the Convention to investigate the systematic use of torture in Nepal.

*(i) Torture during interrogation*

54. While the practice of torture in Nepal has significantly decreased since the signing of the Peace Agreement in 2006, it remains widespread during interrogation in police custody and has seen a problematic resurgence since the beginning of 2009. Advocacy Forum-Nepal (AF) and the Redress Trust (REDRESS), the Centre for Victims of Torture, Nepal have in particular provided data to the Committee that they assert reflects an ongoing pattern of habitual and widespread torture in Nepal.

55. During the universal periodic review (UPR) of the Human Rights Council on the situation of Nepal in January 2011, this assessment was also endorsed by National Human Rights Institutions (National Human Rights Commission of Nepal, the National Women Commission of Nepal and the National Dalit Commission of Nepal), which noted that torture is frequently practiced in detention.<sup>30</sup> Also during the universal periodic review, a number of NGOs expressed their concerns regarding the practice of torture by the police in

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<sup>27</sup> Ibid., p. 177.

<sup>28</sup> Ibid., p. 178.

<sup>29</sup> Ibid., p. 178.

<sup>30</sup> Joint report by the National Human Rights Institutions, para. 15.

the course of criminal investigations and the lack of effective redress for victims of torture.<sup>31</sup>

56. In May 2011, AF and REDRESS indicated that while the rate of reported torture in Nepal has gradually declined since 2001, there has been an apparent reversal in this trend from 2009 and more importantly in the period of July to December 2010.<sup>32</sup> During the period from January to December 2009, around 20 per cent of detainees interviewed reported torture, and during the period January–December 2010, this number remained largely consistent, with 19.3 per cent of 4,198 detainees interviewed alleging torture.<sup>33</sup> As there is no independent mechanism in place to monitor detention conditions throughout the country; AF notes that its data, gathered at 57 places of detention in 20 of Nepal’s 75 districts, is only suggestive of wider patterns across the country. However, given the consistency with which patterns of torture that it has documented have emerged over time, AF is confident that they are reflective of national trends.<sup>34</sup>

57. AF and REDRESS reported that since the end of the armed conflict, torture and ill-treatment are most commonly reported to be carried out by the Nepal Police (NP), the Armed Police Force (APF) (especially in the Terai region), customs officers and officials of the Forestry Department (who have powers to arrest and investigate in national parks). Members of the Young Communist League (YCL), the youth wing of the Communist Party of Nepal-Maoist and similar youth organizations set up by other political parties, and a number of armed groups operating in the Terai are also alleged to have committed acts amounting to torture and ill-treatment.<sup>35</sup>

58. As for the methods of torture or other ill-treatment used, the Centre for Victims of Torture Nepal has stated that public officials employ 70 different methods of torture in detention. Advocacy Forum has also recorded these practices. They include beatings on various parts of the body, kicking and punching on various parts of the body including on thighs, hips, shoulders, back and head; slapping; application of electric current, including on ear lobes; jumping and kicking on the body; tying the legs and arms and suspending the detainee upside down; trampling on the detainee’s palms until they bleed; gagging the detainee to avoid noise; handcuffing the detainee to a post or stump fixed on the wall, forcing him/her to stand all night; making a detainee run or jump after being hit on the soles of the feet; forcing the detainee to adopt a half-sitting position for 15–20 minutes; stubbing out cigarettes on the body; plucking ears and pinching body parts; pouring water into the nose; formulating threats; using other types of verbal abuse; and using forced labour. Specific methods of torture used against women include rape, threats of rape, sexual abuse and sexual verbal abuse. Most of these practices are reported during interrogation although beating, slapping, blindfolding and using verbal abuses have been reported at the time of arrest and during transfer to police stations.<sup>36</sup>

(ii) *Torture of children in custody*

59. NGOs report that despite the adoption of the Juvenile Justice Regulations in 2006, juveniles in custody remain particularly vulnerable to torture in Nepal. AF and REDRESS

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<sup>31</sup> See NGO submissions to the Human Rights Council’s universal periodic review concerning the human rights situation in Nepal: Submission of ALRC\_AF, para. 14 and submission of Amnesty International, para. C, p. 5, “Torture and other ill-treatment”.

<sup>32</sup> “Submission to the Committee against Torture under article 20”, Update January–December 2010, Advocacy Forum and REDRESS, 29 April 2011, p. 1.

<sup>33</sup> *Ibid.*, p. 1.

<sup>34</sup> *Ibid.*, p. 2.

<sup>35</sup> “Submission to the Committee against Torture under article 20”, Advocacy Forum and REDRESS, 5 March 2010, p. 7.

<sup>36</sup> Criminalise torture, Coalition of Torture (Nepal), 26 June 2009. These allegations are also mentioned in the “Submission to the Committee against Torture under article 20”, Advocacy Forum and Redress, 5 March 2010, p. 9.

noted that 23.9 per cent of 1,024 juveniles interviewed by AF during 2010 reported torture or other ill-treatment, a rate that is considerably higher than that for the general population (19.3 per cent in 2010).<sup>37</sup> In addition, juveniles from minority ethnic groups allege being more frequently tortured than those belonging to major ethnic groups. For instance, in 2010, a total of 23.4 per cent of juveniles alleging torture belonged to the Chetri Group, 22.1 per cent belong to the Terai ethnic group and 13.5 per cent belonged to the Dalit ethnic group.<sup>38</sup>

60. AF and REDRESS indicated that the group of detainees that most frequently alleged torture in 2010 was that comprising individuals charged under the Arms and Ammunition Act (42.5 per cent, or 65 of 153 individuals interviewed). People held under the Arms and Ammunition Act can be tried before Chief District Officers (CDOs), without representation by a lawyer or time to prepare their defence. AF claimed that CDOs are in general more likely to accept confessions extracted under torture.<sup>39</sup> These fair trial violations correspond to a serious discrepancy in conviction rates between the District Courts and CDOs. In fiscal year 2006–2007, District Courts convicted 72.67 per cent of 4,524 defendants, whereas CDOs convicted 98.27 per cent of 2,516 defendants.<sup>40</sup>

(iii) *Incommunicado detention*

61. The Centre for Victims of Torture Nepal alleged the use of mobile secret detention centres for torture purposes, noting that while the existence of such clandestine places of detention cannot be confirmed, the organization has received frequent allegations from victims that they exist.<sup>41</sup>

(iv) *Abuses in the Terai region*

62. NGOs reported that internal disturbances, especially in the Terai region, have led to an increase in both torture and extrajudicial killings by the Nepal Police, the Nepal Armed Police Force and the Nepal Army. According to AF and REDRESS, in recent years, rates of torture are significantly higher than the national average in some particular areas of the country, notably in several districts of the Terai. For instance, 40.9 per cent of detainees interviewed in Dhanusha district, 30.5 per cent of detainees in Sunsari district and 29.3 per cent of detainees in Surkhet district reported torture. All of these districts are located within the Terai region. Moreover, from 2009 to 2010, the trends in reports of torture in the Terai region have increased from 22.4 to 33.2 per cent in the Morang district, from 23.3 to 27 per cent in Banke district, from 21 to 26 per cent in Jhapa district, from 10 to 13 per cent in Kapilvastu district and from 13.4 to 14.5 per cent in Udayapur district.<sup>42</sup> AF and REDRESS also reported that in 2010, members of the Terai ethnic groups were more frequently subjected to torture than other detainees, as while individuals from Terai ethnic groups make up only 17 per cent of the detainees interviewed, they lodged 22.9 per cent of the allegations of torture recorded.

63. APF has become increasingly involved in arrests related to armed groups in the Terai region. It does not have clear legal powers to arrest and detain. However, in the context of ongoing unrest in the Terai region, its forces have been deployed alongside the NP.

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<sup>37</sup> “Submission to the Committee against Torture under article 20”, Update January-December 2010, Advocacy Forum and REDRESS, 29 April 2011, p. 6–7.

<sup>38</sup> *Ibid.*, Annex 1 and 2, Table 12.

<sup>39</sup> Review of the implementation of recommendations made by the Special Rapporteur on the question of torture, Manfred Nowak, after his mission to Nepal in 2005, Advocacy Forum, September 2010, p. 2.

<sup>40</sup> “Submission to the Committee against Torture under article 20”, Advocacy Forum and REDRESS, 5 March 2010, p. 20.

<sup>41</sup> “Centre for victims of torture Nepal’s report on the situation of torture in Nepal”, April 2010.

<sup>42</sup> “Submission to the Committee against Torture under article 20”, Update January-December 2010, Advocacy Forum and Redress, 29 April 2011, p. 5 and 7.

Allegations of illegal detention by APF have also been reported. For example, in 2010, AF and REDRESS alleged that torture had occurred at the Hathlewa and Mujeliya APF camp in Dhanusha District as well as at the Pathibara Gan APF camp in Padaguji, Jhapa district.<sup>43</sup>

64. The Asian Legal Resource Center recorded 12 cases of alleged extrajudicial executions in the Terai region between February and October 2009 involving 15 victims. In most cases the alleged perpetrator was a member of the police, but two cases involved members of the APF. According to ALRC, in each of these cases, the security forces claimed that there had been an “encounter” between the police and alleged members of armed groups. However, there was no indication that members of the police or army were killed or injured in any of these incidents.<sup>44</sup>

(v) *Failure of safeguards intended to protect against torture*

a. Records of detention

65. The Centre for Victims of Torture Nepal also reported that security forces have increasingly tortured or ill-treated individuals on their way to a place of custody. This practice impedes detainees’ ability to prove allegations of torture, as authorities can argue that a detainee’s injuries were sustained either through lawful means of arrest or at the hands of civilians.<sup>45</sup>

66. AF and REDRESS also noted that despite the fact that article 15(a) of the Civil Rights Act (4 November 1955), which is also enshrined in the Interim Constitution, requires that a person be informed of the reason for his/her arrest at the time he/she is detained, in practice, 73.6 per cent of the detainees interviewed by AF in 2009 and 77.7 per cent of those interviewed in 2010 stated that they were not informed to the reason for their arrest at the time they were detained.<sup>46</sup>

b. Required medical examinations of detainees

67. Among the 3968 detainees interviewed by AF between December 2008 and November 2009, 17.2 per cent stated that they had not received a medical check-up during their time in custody; the rate of detainees receiving no medical check-up decreased to 13 per cent in 2010.<sup>47</sup> However, AF and REDRESS note that while the Compensation relating to Torture Act (CRT) requires that all detainees receive a medical check-up at the time of arrest as well as an examination at the time of release, it does not require that an *independent* doctor perform this examination. To the contrary, it states that such examinations should be performed *as far as possible* by a doctor from Government services, and when such doctor is not available, by the police.<sup>48</sup> As a result of this provision, detainees rarely, if ever, receive independent medical examinations. The Centre for Victims of Torture Nepal reported that in cases in which individuals accused police of acts of torture, prompting a court to order a medical examination, the police took the detainee to a police hospital or a doctor of their own choice to ensure that the medical report would not reveal signs of torture.<sup>49</sup>

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<sup>43</sup> “Submission to the Committee against Torture under article 20”, Advocacy Forum and Redress, 5 March 2010, p. 7.

<sup>44</sup> Submission to the Human Rights Council’s universal periodic review concerning the human rights situation in Nepal, 2010, ALRC\_AF, par. 17.

<sup>45</sup> “Centre for victims of torture Nepal’s report on the situation of torture in Nepal”, April 2010.

<sup>46</sup> “Submission to the Committee against Torture under article 20”, Advocacy Forum and REDRESS, 5 March 2010, p. 21.

<sup>47</sup> *Ibid.*, p. 20.

<sup>48</sup> *Ibid.*, p. 20.

<sup>49</sup> “Centre for victims of torture Nepal’s report on the situation of torture in Nepal”, April 2010.

- c. Requirement to present detainees before a judge within 24 hours of arrest

68. The 1955 Police Act, the 1955 Civil Rights Act, the 1993 State Cases Act and the Interim Constitution require that a detainee be brought before a judge within 24 hours of arrest. However, these laws are only partly respected in practice: AF and REDRESS reported that 47.1 per cent of the detainees interviewed in 2009 and 47.6 per cent of the detainees interviewed in 2010 were not brought before a judge within this time frame.<sup>50</sup>

- d. Right to legal counsel

69. AF and REDRESS reported that 77.6 per cent of the detainees interviewed were not aware of their right to legal counsel under Nepali law, demonstrating that while safeguards against torture in detention may be provided by law, they are not effective in practice.<sup>51</sup>

- e. Prohibition on the use of self-incriminatory statements obtained by force in court proceedings

70. Some NGOs report that coerced confessions are frequently admitted as evidence in criminal proceedings and that there is little to prevent the police from using physical and mental coercion to compel detainees to confess. AF and REDRESS report that judges rarely ask detainees if their statements were freely given and instead require detainees alleging coerced confessions to prove that their statements were not freely given, thus reversing the appropriate burden of proof.<sup>52</sup>

- f. Lack of investigations into allegations of inhumane treatment of persons in custody

71. Nepali law does not require judges to inquire whether a detainee has been tortured while in custody. While some judges have made it a practice to ask detainees to remove their shirt and state whether they have been subjected to torture by the police, others do not. This practice is therefore not uniform among judges. Among the detainees interviewed by AF, 93.3 per cent of those taken to court in 2009 and 86.7 per cent of those taken to court in 2010 were not asked by the judge if they had been subjected to torture.<sup>53</sup>

## 2. Impunity

### (a) United Nations sources

72. Impunity for past and current human rights violations remains a central concern expressed in all United Nations reports, including the 2010 report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process,<sup>54</sup> the 2010 report of the United Nations High Commissioner for Human Rights,<sup>55</sup> OHCHR-Nepal Summary of Concerns (July 2010) on allegations of extrajudicial killings in the Terai and the 2011 follow-up report of the Special Rapporteur on the question of torture.<sup>56</sup>

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<sup>50</sup> "Submission to the Committee against Torture under article 20", Advocacy Forum and REDRESS, 5 March 2010, p. 21.

<sup>51</sup> *Idem*.

<sup>52</sup> "Submission to the Committee against Torture under article 20", Advocacy Forum and Redress, 5 March 2010, p. 22.

<sup>53</sup> "Submission to the Committee against Torture under article 20", Update January-December 2010, Advocacy Forum and Redress, 29 April 2011, p. 10.

<sup>54</sup> Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process, S/2010/17, 7 January 2010, par. 27.

<sup>55</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal, A/HRC/13/73, 5 February 2010, par. 26.

<sup>56</sup> Follow-up report of the Special Rapporteur on torture, A/HRC/16/52/Add.2, para. 77.

(i) *Failure to undertake adequate investigations into allegations of torture and to prosecute and punish those responsible*

73. As the Special Rapporteur on the question of torture noted in his 2011 follow-up report, there is no credible information demonstrating that any criminal prosecution and conviction against authorities indicted for abuse or torture has occurred in Nepal.<sup>57</sup> In general, from the interviews he conducted, the Special Rapporteur found a lack of confidence in the justice system and the rule of law on the part of victims and their families. In his 2011 follow-up report, he concluded that the civilian judicial system has failed to deliver justice as the State authorities themselves fail to observe court orders.<sup>58</sup> He also expressed his concern that a number of laws granting quasi-judicial powers to Chief District Officers (CDOs), and imposing only disciplinary sanctions and lenient penalties imposed on public officials for their alleged involvement in torture and ill-treatment, contribute to the culture of impunity.<sup>59</sup> He noted that the Police Act provides for disciplinary actions and lenient penalties for police officers involved in torture.<sup>60</sup> He further noted that only individuals who are found guilty of human rights violations are disqualified from participating in United Nations peacekeeping, rendering this penalty on perpetrators of torture largely ineffective.<sup>61</sup>

74. The 2010 report of the High Commissioner for Human Rights on the human rights situation in Nepal revealed that despite public and private commitments made by the State party, including those made by the Prime Minister before the General Assembly in September 2009, there had been no substantial progress in addressing impunity for conflict or post-conflict human rights violations and abuses; and both the NA and UCPN-M continued to resist attempts to hold their personnel accountable for human rights violations and abuses and to withhold cooperation from civilian authorities responsible for investigating these cases.<sup>62</sup> The lack of progress in addressing impunity was also raised by the Secretary-General in January 2010.<sup>63</sup> Persistent impunity for human rights violations has had a corrosive effect on rule of law institutions and has further damaged their credibility. It has directly contributed to widespread failings in public security by sending a message that violence carries no consequences for the perpetrators.<sup>64</sup>

75. The 2010 High Commissioner's report deplores the Government's lack of response to serious allegations of human rights violations involving Army personnel, including with regard to the non-implementation of orders issued by Nepali Courts. For example, the Kavre District Court issued a decision in September 2009 ordering the Army to suspend an alleged perpetrator, against whom an arrest warrant is outstanding, in the torture and killing of 15-year-old Maina Sunuwar in 2004 and to produce relevant documents, but the Army failed to comply with the order to suspend the suspect, whom it sent on a United Nations peacekeeping mission. The officer was subsequently repatriated by the United Nations. The Nepal Army has refused to surrender him to civilian authorities for an independent investigation, despite requests from the Nepal Police and NHRC. The Government has yet to arrest any of the four accused in the case, even though arrest warrants have been outstanding since July 2008.<sup>65</sup>

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<sup>57</sup> Ibid., pp. 181–182.

<sup>58</sup> Ibid., pp. 181–182.

<sup>59</sup> Ibid., para. 77.

<sup>60</sup> Ibid., p. 171.

<sup>61</sup> Follow-up report of the Special Rapporteur on torture (HRC/16/52/Add.2), pp. 186–187.

<sup>62</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal (A/HRC/13/73), 5 February 2010, para. 26.

<sup>63</sup> Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process (S/2010/17), 7 January 2010, paras. 27 and 30.

<sup>64</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal (A/HRC/13/73), 5 February 2010, para. 27.

<sup>65</sup> Ibid., para. 29.

76. The 2010 High Commissioner's report notes that although OHCHR extensively documented acts of conflict-related torture and enforced disappearances at the Chisapani barracks in Bardiya district in a public report released in 2008, one of the main alleged perpetrators continues to serve in the Army. The leadership of UCPN-M has likewise failed to cooperate with criminal investigations into the involvement of its cadres in serious human rights abuses during and after the conflict, including the killings of nearly 40 civilians in the bombing of a public bus in Made, Chitwan district in 2005, and the killings of Ram Hari Shrestha, Arjun Lama, and journalist Birendra Sah. OHCHR documented the lack of progress in each of these cases in a letter to the Chairman of the UCPN-M in July 2009.<sup>66</sup>

77. The Special Rapporteur on the question of torture noted that despite repeated requests by OHCHR to the Government to conduct a thorough and impartial investigation into allegations of torture at the Maharajgunj barracks under the control of the NA Bhairabnath Battalion, no proper investigation has been undertaken and at least one perpetrator continues to serve in the NA.<sup>67</sup> However, he noted that in December 2007, a site was identified where the body of one of the disappeared may have been cremated, and a group of Finnish forensic experts visited the country in January 2008 and assisted local experts in the exhumation of some of the remains, and that additionally an 11-member team of Nepali and Finnish forensic experts led by the NHRC has started exhumations with regard to cases of disappearance in Dhanusha district.<sup>68</sup>

78. The Special Rapporteur on the question of torture further criticized the performance of the "Human Rights Cell" set up within the Nepal Police, stating that its concept of "investigation" appeared to comprise mainly sending a letter with details of the complaint to the relevant District Police Office and requesting a response from that office, without actually visiting the detainees making the complaint and interviewing them privately. At the time of writing, no police officer had been suspended as a result of an investigation by the Human Rights Cell and in no cases had the Human Rights Cell visited a complainant and interviewed him/her privately to ascertain the veracity of the allegation.<sup>69</sup>

79. The Special Rapporteur on the question of torture further noted that the Attorney General himself stated in May 2010 that its department was not entrusted with the investigation of ill-treatment in custody as stated under Section 135(3) of the Interim Constitution, but rather only had the power to monitor investigations carried out by the police.<sup>70</sup>

(ii) *Failure to criminalize torture in line with the definition provided in the Convention and to provide adequate redress to victims of torture*

80. In 2005, following his visit to Nepal, the Special Rapporteur on the question of torture expressed deep concern about the prevailing culture of impunity for torture in Nepal, especially the emphasis on compensation to victims as opposed to criminal sanctions against perpetrators. Although officials cited the 1996 Compensation Relating to Torture Act (CRT) as being an effective preventive and deterrent measure against the practice of torture, the Special Rapporteur noted that the Act does not contain a definition of torture in line with article 1 of the Convention, nor does it provide for effective remedies; it does not provide for the criminalization of torture or the imposition of punishment commensurate with the gravity of torture. In the view of the Special Rapporteur on torture, the sanction of "departmental action" against perpetrators is so grossly inadequate that any preventive or

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<sup>66</sup> Ibid., paras. 30–31.

<sup>67</sup> Follow-up report of the Special Rapporteur on torture, A/HRC/16/52/Add.2, p. 180.

<sup>68</sup> Ibid., p. 179.

<sup>69</sup> Ibid., pp. 180–181.

<sup>70</sup> Ibid., p. 180.

deterrent effect envisaged by the Act is meaningless in practice. The Special Rapporteur was of the view that, if the Act did anything, it actually prevented and discouraged torture victims from seeking and receiving justice for torture and ill-treatment.<sup>71</sup>

81. The 2010 report of the High Commissioner for Human Rights noted that gaps and ambiguities in Nepal's legal framework further hampered the prosecution of human rights violations in Nepali Courts and that neither torture nor enforced disappearance has been criminalized in Nepali legislation, placing additional obstacles in the way of victims and families seeking accountability in an already impaired criminal justice system.<sup>72</sup>

**(b) Non-governmental organizations and national human rights institutions**

82. NGOs concur with the view that impunity for human rights violations remains the norm in Nepal with respect to both past human rights violations, which occurred during the armed conflict, and more recent human rights violations. They highlighted the impunity of police officers and other officials repeatedly accused of torture and the failure of prosecutors and judges to carry out investigations on allegations of torture.<sup>73</sup>

*(i) Failure to undertake adequate investigations into allegations of torture and to prosecute and punish those responsible*

83. NGOs point out that impunity continues to impede justice for recently committed crimes, such as in the case of Amrita Sunar, Devisara Sunar and Chandrakala Sunar, who were killed on 10 March 2010. Two survivors claim that the women were part of an unarmed group of villagers collecting Kaulo (medicinal tree bark) when about 17 army personnel surrounded them and opened fire, resulting in the three deaths. The Nepal Army claims that the three victims were killed during an exchange of gunfire with armed poachers. AF and the Informal Sector Service (INSEC) made their own investigation to support the victims' relatives. On 12 March 2010, the Bardiya police went to the crime scene to investigate. Their efforts were vain, partly because of the army's unwillingness to cooperate. On 25 March 2010, the relative of one of the victims managed to have the police register a FIR against the 17 army personnel and four forestry officials. According to the families, army personnel threatened them, and coerced them into signing an agreement to withdraw the FIR in exchange of 25,000 NRS (US\$ 340).<sup>74</sup> On 17 March 2010, an investigation committee led by an assistant attorney general was set up to look into the incident. It submitted its report to the Government on 19 April 2010. The Government subsequently appointed a ministerial committee to study its findings. The findings have still not been made public and no concrete action has been taken.<sup>75</sup>

84. NGOs also raised the case of Dharmendra Barai, who died on 4 July 2010, after having been allegedly tortured in police custody. Both national and local governmental authorities set up investigations in response to the outcry from civil society following his death. On 18 July 2010, the Home Ministry set up an investigation team, which visited the place where the alleged torture occurred. However, as late as November 2010, the team had not yet published a report. On 3 August 2010, another investigation team, set up by the district

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<sup>71</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (E/CN.4/2006/6/Add.5), 9 January 2006, p. 3.

<sup>72</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal (A/HRC/13/73), 5 February 2010, para. 32.

<sup>73</sup> Submissions to the Human Rights Council's universal periodic review by NGO coalitions, including Amnesty International, International Commission of Jurists, Advocacy Forum and the Asian Legal Resource Centre (ALRC), 2010.

<sup>74</sup> Under the State Cases Act and its regulations, a FIR cannot be withdrawn once it has been registered unless decided by the Attorney General.

<sup>75</sup> "Indifference to duty, impunity for crimes committed in Nepal", Human Rights Watch and Advocacy Forum, December 2010, p. 15.

administration, made its report public. The report concluded that the cause of death was unknown and that there was insufficient proof that torture was the cause of death. It said the police had failed to take Dharmendra for a medical check-up at the time of arrest and to notify the higher authorities of his arrest. It recommended to the Government to provide the victim's family with compensation. The Government only paid 20,000 NRS to cover the funeral costs. The case is pending in court and no disciplinary action has been taken. On 22 August 2010, the victim's father tried to have a FIR registered but the police refused to do so, stating that it had already registered a FIR and that investigations had been carried out.<sup>76</sup>

85. AF noted that in practice, proceedings against individuals accused of torture are rarely initiated as there is no impartial mechanism for receiving and investigating complaints of torture, and the police are the authority in charge of receiving these complaints.<sup>77</sup> Even when complaints reach the police, the latter routinely refuse to accept them from relatives of victims and to register First Information Reports (FIRs). And when FIRs are registered, police and prosecutors routinely procrastinate in carrying out investigations, sometimes despite superior's orders or court's rulings. This behaviour can be attributed to the great influence of the Nepal Army and the Maoist forces and police's knowledge that neither the army nor political parties will cooperate with the investigation. Following the release of AF report "Waiting for Justice" in October 2008, the NGO helped families of 51 victims file a total of 30 FIRs with the police, and on 10 December 2009, Human Rights Day, families of victims and lawyers tried to file another 28 FIRs with the police authorities in 12 districts. The police refused to register any of the FIRs submitted, stating that they first had to consult with higher authorities.<sup>78</sup>

86. NGOs also raised a number of cases in which accusations of torture and enforced disappearances have been brought against high-ranking officers of the Nepal Army but in which no prosecutions have occurred. Instead, in some of these cases, the alleged perpetrators have been promoted. For example, Toran Bahadur Singh, former commander of the 10th Brigade, was accused of involvement in cases of enforced disappearances and custodial torture in the notorious Maharajgunj barracks in Kathmandu in 2003 and 2004. Singh was later promoted and appointed as Major General, acting as army chief in October 2009.<sup>79</sup>

87. NGOs also report impunity for torture and disappearances committed by the Unified Communist Party of Nepal-Maoist (UCPN-M). In the case of Arjun Bahadur Lama, who disappeared after his abduction by the Maoists in 2005, UCPN-M have not cooperated with investigations made by the police and the NHRC, arguing that such cases should be dealt with through transitional justice mechanisms that have yet to be established.<sup>80</sup>

88. NGOs have observed a lack of consistency and respect for higher courts' jurisprudence by the Appellate Court in several instances. In its ruling of 18 September 2007 regarding the torture and death of Maina Sunuwar, the Nepal Supreme Court decided that civilian courts had jurisdiction over alleged criminal acts committed by security forces during the armed conflict. In the Reena Rasaili ruling of 14 December 2009, the Supreme Court stated that an act declared a crime by law is a crime notwithstanding the identity or status of the perpetrator or the circumstances in which these acts occurred. The Court added that "the law does not prevent anyone from investigating a FIR stating that a woman sleeping at night in her home was forcefully arrested and shot dead by the army or security personnel.

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<sup>76</sup> "Indifference to duty, Impunity for Crimes Committed in Nepal", Human Rights Watch and Advocacy Forum, December 2010, p. 15.

<sup>77</sup> "Submission to the Committee against Torture under article 20", Advocacy Forum and REDRESS, 5 March 2010, p. 25.

<sup>78</sup> "Indifference to duty, impunity for crimes committed in Nepal", Human Rights Watch and Advocacy Forum, December 2010, p. 4.

<sup>79</sup> Ibid., p. 10.

<sup>80</sup> Ibid., p. 10.

It would be a mockery of the law and of the national rights of civilians”.<sup>81</sup> However, despite this ruling, some appellate courts have continued to reject writ petitions on the ground that civilian courts were not competent to deal with complaints against security personnel, whereas some other appellate courts apply the 2007 Supreme Court ruling.<sup>82</sup>

89. NGOs have also reported problems with implementation of court orders, noting the case of the inquiry into the death of 15-year-old Maina Sunawar, in which a court martial ruling sentenced the three officers allegedly responsible for her death to six months in prison and a temporary suspension of promotion (September 2005). Thereafter, acting on a complaint by the victim’s mother, a District Court charged four army officers with Maina Sunawar’s murder and issued arrest warrants against the officers in January 2008. To date, they have not been arrested. On the contrary, in mid-2009, one of the accused was sent by the Nepal Army on a peacekeeping mission in Chad. The United Nations repatriated him to Nepal in December 2009, but the army took him into their custody on his arrival at the airport in Nepal and has so far not handed him over to the civilian authorities, despite the court orders and orders from the Prime Minister.<sup>83</sup>

90. Similarly, in August 2010, the Prime Minister’s Office issued a response to the Supreme Court, stating that the perpetrators would be punished following an investigation by the to-be-formed commission, referring to the Truth and Reconciliation Commission, which has not yet been established. This ignores an earlier Supreme Court ruling rejecting police attempts to delay investigations on the basis that these could only be performed by such a commission.<sup>84</sup> Similarly, following United Nations Human Rights Committee Views on the disappearance of Surya Prasad Sharma, the Government of Nepal stated that the author’s disappearance would be investigated by the yet-to-be established Commission on the Inquiry into Disappearances, thus failing to respect Human Rights Committee Views to prosecute those responsible in a timely manner.<sup>85</sup>

91. NGOs have further submitted that delays in establishing mechanisms such as the Truth and Reconciliation Commission and the Commission on the Inquiry into Disappearances contribute to the state of impunity in Nepal as they show a persistent lack of political will to investigate past gross violations of human rights, including approximately 1,000 cases of enforced disappearances and abductions which remain unsolved since the end of the conflict.<sup>86</sup>

(ii) *Ineffectiveness of the National Human Rights Commission*

92. In its 2007–2008 annual report, the National Human Rights Commission cited the lack of implementation of its recommendations by the Government as one of the major challenges in its work. The NHRC received 1,173 complaints of human rights violations, including 104 of torture by security forces from 17 July 2007 to 14 July 2008. It conducted a total of 175 investigations, and made recommendations in 62 cases. None of its recommendations were implemented. The NHRC has repeatedly expressed frustration at

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<sup>81</sup> Supreme Court of Nepal, ruling of 14 December 2009 in Writ no. 0339/2064 (2007), p. 4.

<sup>82</sup> “Indifference to duty, Impunity for Crimes Committed in Nepal”, Human Rights Watch and Advocacy Forum, December 2010, p. 7.

<sup>83</sup> “Submission to the Committee against Torture under article 20”, Advocacy Forum and Redress, 5 March 2010, p. 27.

<sup>84</sup> Supreme Court ruling of 10 March 2008 in Writ. No. 1231 (2007).

<sup>85</sup> Human Rights Committee, *Yashoda Sharma v. Nepal*, communication No. 1469/2006, Views adopted on 28 October 2008.

<sup>86</sup> “Submission to the Committee against Torture under article 20”, Advocacy Forum and REDRESS, 5 March 2010, p. 27. See also “Recipe for impunity at work in Bardiya National Park”, Asian Commission for Human Rights; see [www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/](http://www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/).

the Government's lack of implementation of its recommendations. In August 2010, it stated that, of the 386 recommendations made, the Government had implemented only 34.<sup>87</sup>

93. NGOs also raised concern regarding the efficiency of NHRC's work. From 16 July 2008 to 14 July 2009, 677 complaints of human rights violations were reportedly brought to the Commission's attention.<sup>88</sup> This includes 70 allegations of torture by security forces. Out of these 70 cases, the NHRC investigated only three. In two of the three cases, it recommended action against the perpetrators, and in all three cases, compensation.<sup>89</sup> The annual report does not provide information on the reason why the remaining 67 cases were not investigated. Similarly, a joint study from the NHRC and CVICT, which examined the cases of 594 torture victims in five districts, revealed a high prevalence of torture as a consequence of which victims suffer from serious physical and mental problems and associated disabilities.<sup>90</sup> The NHRC did not take the initiative to process these cases for compensation but only called on human rights organizations to put in place immediate rehabilitation services for torture victims.<sup>91</sup>

(iii) *Failure to criminalize torture in line with the definition provided in the Convention*

94. According to AF, although the Interim Constitution promulgated in January 2007 made torture a criminal offence, it is still considered a civil offence since no bill on torture (providing criminal penalties for torture acts), has been passed to date.<sup>92</sup> Without legislation expressly defining the offense, perpetrators can only be charged under the assault provision of the Muluki Ain (Country Code). There are no criminal sanctions provided for in the 1996 Compensation relating to Torture Act (CRT).<sup>93</sup>

95. Despite a landmark ruling of the Supreme Court in 2007 and the initiation of a Commission on Disappeared Persons bill, there have been no major positive developments to resolve disappearance cases or to criminalize enforced disappearance in Nepali law.<sup>94</sup>

(iv) *Failure to provide adequate redress to victims of torture*

96. NGOs report that despite the existence of the Compensation relating to Torture Act (CRT), victims of torture are rarely able to access compensation. Since the enactment of the CRT, out of 160 cases filed by the Centre for victims of Torture Nepal for torture compensation, 8 have received some compensation out of the 50 with positive decisions in favour of victims. Due to this lack of access to justice and reparations, victims have lost confidence in the judicial system and have become increasingly reluctant to bring compensation cases to court. In cases where victims obtain some form of compensation, it is usually awarded with significant delays. The compensation amounts provided are very low, ranging from 10,000 NRS (100 euros) to 100,000 NRS (1,000 euros). But most victims receive the minimum amount, which is not nearly sufficient to cover the costs of their physical and psychological rehabilitation.<sup>95</sup>

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<sup>87</sup> "Discrimination and Irregularities, The Painful Tale of Interim Relief in Nepal", A report, Advocacy Forum, 2010, p. 6.

<sup>88</sup> NHRC Annual report July 2008 to July 2009, only available in Nepali and therefore referred to in "Discrimination and Irregularities, The painful Tale of Interim Relief in Nepal", A report, Advocacy Forum, 2010, p. 6.

<sup>89</sup> Idem.

<sup>90</sup> NHRC, "Study on the insurgency related to torture and disability", 2003.

<sup>91</sup> "Discrimination and Irregularities, The painful tale of interim relief in Nepal", A report, Advocacy Forum, 2010, p. 6.

<sup>92</sup> "Criminalize Torture, Advocacy Forum, 2009, p. 3 and "Submission to the Committee against Torture under article 20", Advocacy Forum and REDRESS, 5 March 2010, p. 25.

<sup>93</sup> "Centre for victims of torture Nepal's report on the situation of torture in Nepal", April 2010.

<sup>94</sup> "Submission to the Committee against Torture under article 20", Advocacy Forum and REDRESS, 5 March 2010, p. 27. See also "Recipe for impunity at work in Bardiya National Park", Asian Commission for Human Rights; see [www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/](http://www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/).

<sup>95</sup> "Centre for victims of torture Nepal's report on the situation of torture in Nepal", April 2010.

## V. Conclusions and recommendations of the Committee

97. The Committee recalls the definition of systematic practice of torture adopted at its first inquiry:

The Committee considers that torture is practised systematically 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. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.<sup>96</sup>

98. The Committee recalls the findings of United Nations bodies, non-governmental organizations, and national human rights institutions cited in this report, including the 2009 report of the High Commissioner for Human Rights on the human rights situation in Nepal,<sup>97</sup> which mentioned that reports of ill-treatment sometimes amounting to torture were widespread, especially during interrogation; the follow-up report of 4 March 2011 of the Special Rapporteur on the question of torture, who found that reports of beatings and ill-treatment sometimes amounting to torture were widespread in Nepal, especially during interrogation; and NGO reports stating that while the practice of torture in Nepal has significantly decreased since the end of the conflict, it remains widespread during interrogation in police custody and has seen a problematic resurgence since the beginning of 2009, reflecting an ongoing pattern of habitual and widespread torture in Nepal.

99. The Committee further notes that juveniles in custody remain particularly vulnerable to torture in Nepal. Information provided by United Nations bodies and NGOs highlight that juveniles continue to report torture in detention at a higher rate than the general population and continue to be detained in adult facilities and that rates of torture are significantly higher than the national average in several districts of the Terai region. The Committee notes that torture and ill-treatment are most commonly reported to be carried out by the Nepal Police (NP), the Armed Police Force (APF), customs officers, and officials of the Forestry Department in order to coerce confessions.

100. The Committee considers these reports to contain well-founded indications that torture is being systematically practised, and has been for some time, often as a method for criminal investigation and for the purpose of obtaining confessions, in a considerable part of the territory of Nepal.

101. The Committee recalls its earlier conclusions in its first inquiry, where it stated:

“The Committee considers that, even though only a small number of torture cases can be proved with absolute certainty, the copious testimony gathered is so consistent [...] that the existence of systematic torture cannot be denied.”<sup>98</sup>

102. The Committee notes the information provided by United Nations bodies and NGOs regarding allegations of widespread torture in Nepal and regrets that Nepal did not agree to a visit to its territory which would have allowed for direct engagement between Committee members and individuals alleging torture, as well as with the relevant

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<sup>96</sup> A/48/44/Add.1, para. 39, and A/56/44, para. 163.

<sup>97</sup> A/HRC/10/53, 3 March 2009.

<sup>98</sup> A/48/44/Add.1, para. 38.

authorities. The Committee notes that a number of observers report that while the practice of torture in detention remains widespread, with approximately 20 per cent of detainees reporting being subjected to torture, these reports suggest that today, security forces in Nepal are committing torture at a lower rate than alleged during the conflict era. However, as the Committee has previously determined, a State party may be considered to be systematically practicing torture despite the fact that there has been a decrease in allegations of violations of the Convention in the years in which the investigation has occurred.<sup>99</sup> The Committee determines that the replies of the State party to these allegations of widespread torture are insufficient to refute them.

103. While noting the State party's claims that it does not approve of torture acts and that it is committed to end impunity, in the Committee's determination, the State party has not provided the Committee with clear and practical evidence corroborating this. Nepal has made no substantial progress in addressing impunity for conflict-era human rights violations and abuses. Allegations of torture continue to be made with great frequency despite the end of the armed conflict in 2006, and the State party has failed to adequately investigate all but a handful of these allegations. In rare cases where investigations into allegations of torture have been successfully carried out, those found responsible have not been subjected to criminal penalties, and particularly not to terms of imprisonment commensurate with the gravity of the offense. The Committee recalls its general comment No. 2 where it has stated, in the context of non-State actors, that where State authorities have reasonable grounds to believe that acts of torture or ill-treatment are being committed and they fail to exercise due diligence to prevent, investigate, prosecute and punish the perpetrators, the State bears responsibility and its officials should be considered as authors, responsible under the Convention for consenting to or acquiescing in such impermissible acts. The Committee's general comment No. 2 further articulates that the failure of the State to exercise due diligence to intervene and stop, sanction and provide remedies to victims of torture, facilitates and enables the commission of acts impermissible under the Convention with impunity, and also that the State's indifference or inaction regarding torture and ill-treatment provides a form of encouragement and/or de facto permission.<sup>100</sup> Although these principles are articulated in general comment No. 2 with an eye to the commission of torture and ill-treatment by non-State actors, they are undoubtedly applicable in cases such as this, in which it is alleged that agents of the State are directly responsible for the commission of torture and ill-treatment of individuals in their custody.

104. Actions and omissions of Nepal therefore amount to more than a casual failure to act. It demonstrates that the authorities not only fail to refute well-founded allegations but appear to acquiesce in the policy that shields and further encourages these actions, in contravention to the requirements of the Convention.

105. The Committee's determination as to whether or not torture is being systematically practiced takes into account both the frequency and territorial scope of incidents of torture in the country and also whether the State party has put effective mechanisms in place to prevent the commission of such abuses. The Committee recalls its general comment No. 2, which notes that States parties are obligated to take positive effective measures to ensure that torture is effectively prevented.<sup>101</sup> In this regard, Nepal failed to ensure the effective prosecution of those responsible in cases in which copious evidence of guilt was gathered by NGOs and the NHRC, and particularly in cases in which national courts established the responsibility of those involved. It failed to put an end to practices such as falsification of police and prison registers, police holding individuals incommunicado for multiple days or for periods longer than 24 hours before presentation to

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<sup>99</sup> A/56/44, para. 160.

<sup>100</sup> General comment No. 2, para. 18.

<sup>101</sup> CAT/C/GC/2.

a judge, police refusals to register FIRs. It failed to put an end to the implementation of provisions of the Arms and Ammunition Act that violate basic due process guarantees. It failed to ensure that detainees receive medical examinations conducted by independent physicians, that judges exclude confessions obtained through torture from legal proceedings, and that promotions of as well as refusals to suspend officials accused of torture or extrajudicial killings are banned. The State party also failed to implement court orders and recommendations of the National Human Rights Commission. All these practices and acts of negligence contribute to the continuing habitual, widespread and deliberate practice of torture in Nepal. The State party's statements disavowing support for torture and condemning impunity are not independently sufficient to address these shortcomings.

106. The Committee further observes that general comment No. 2 notes that States are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment. Nepal acceded to the Convention on 14 May 1991, 20 years ago, and in its concluding observations on the initial report of the State party,<sup>102</sup> in April 1994, the Committee first recommended Nepal to enact legislation prohibiting torture. This same recommendation was reiterated in April 2007 in the Committee's concluding observations on the second periodic report of Nepal.<sup>103</sup> As the Committee notes in general comment No. 2, by defining the offence of torture as distinct from common assault or other crimes, States parties will directly advance the Convention's overarching aim of preventing torture and ill-treatment. Naming and defining this crime will promote the Convention's aim, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture. Codifying this crime will also (a) emphasize the need for appropriate punishment that takes into account the gravity of the offence; (b) strengthen the deterrent effect of the prohibition itself; (c) enhance the ability of responsible officials to track the specific crime of torture; and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention. The State party's inaction with regard to the fundamental obligation of enacting a law criminalizing torture is another factor leading the Committee to conclude that it actively contributes to widespread torture in Nepal, since acts of torture are not yet prohibited and sanctioned under domestic law.

107. The Committee reminds the Government that the Convention against Torture places an obligation on States parties to ensure its implementation in domestic law and to strictly observe its provisions in practice. The information before the Committee does not enable it to conclude that Nepal has established and maintained governmental policies sufficiently effective to prevent torture and to end endemic impunity in Nepal for perpetrators of acts of torture.

108. In light of the abundant and consistent information submitted to it and received from a variety of sources and as found above, the Committee concludes that torture is being systematically practised in the territory of Nepal, according to its longstanding definition, mainly in police custody.

109. **In the light of these considerations, the Committee reiterates the following recommendations from its previous concluding observations:**

**(a) The State party should publicly condemn the practice of torture and take effective measures to prevent acts of torture in any territory under its jurisdiction.**

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<sup>102</sup> A/49/44, paras. 138 to 147.

<sup>103</sup> CAT/C/NPL/CO/2, para. 12.

The State party should also take all measures, as appropriate, to protect all members of society from acts of torture;<sup>104</sup>

(b) The State party should adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention;<sup>105</sup>

(c) The State party should send a clear and unambiguous message condemning torture and ill-treatment to all persons and groups under its jurisdiction. The State party should take effective legislative, administrative and judicial measures to ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances are promptly investigated, prosecuted and the perpetrators punished.<sup>106</sup>

110. Reiterating its recommendation that the State party should demonstrate in practice its will and commitment to combat torture in its territory, the Committee recommends the following measures:

(a) The State party should establish without any delay independent investigative bodies such as the Truth and Reconciliation Commission and the Commission on the Inquiry into Disappearances to inquire into all allegations of torture, extrajudicial killings and enforced disappearances, including the alleged torture and extrajudicial killings which occurred in the Terai region in 2009–2010,<sup>107</sup> the alleged arbitrary detention, torture and disappearance at the Maharajgunj Royal Nepalese Army barracks, Kathmandu, in 2003–2004, and the alleged conflict-related disappearances in Bardiya district (December 2008);<sup>108</sup>

(b) Complaints alleging torture by public officials should be promptly, effectively and impartially investigated and offenders should be prosecuted and, if found guilty, convicted with penalties appropriate to the gravity of their acts;

(c) The Office of the Attorney General should be empowered to initiate and carry out investigations into any allegations of torture and should be provided with the necessary financial and human resources to allow them to fulfil this responsibility;

(d) The State party should take immediate effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention; these include, in particular, the rights to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within the 24-hour time limit. The State party should also ensure that all detainees are included in a central register and should monitor the performance of officials in maintaining this register accurately;

(e) The Committee calls upon the State party to establish an effective national system to monitor and inspect all places of detention and to follow up on the outcome on such systematic monitoring. It should also ensure that forensic doctors trained in detecting signs of torture are present during these visits;

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<sup>104</sup> CAT/C/NPL/CO/2, para. 13.

<sup>105</sup> Ibid., para 12.

<sup>106</sup> Ibid., para. 24.

<sup>107</sup> A/HRC/13/73, para. 38.

<sup>108</sup> A/HRC/13/42, paras. 180–182.

(f) Law enforcement and military personnel accused of torture should be suspended from their duties as well as from any engagement in United Nations peacekeeping activities, pending the outcome of the investigation into alleged torture and any subsequent legal or disciplinary proceedings;

(g) Where a detainee alleged that a confession was extracted under torture, the prosecution should carry the burden of proof that the confession was made freely;

(h) Alleged human rights violations committed by the Nepal Army and Armed Police Forces against civilians should be investigated and prosecuted by ordinary civilian courts at all stages of the criminal proceedings;

(i) The State party should provide all victims of torture with redress, including fair and adequate compensation, full rehabilitation, and other forms of redress as appropriate without further delay. A victim's ability to file claims for redress should not be subject to statutes of limitations. The State party should ensure that all individuals receive awarded redress promptly. Furthermore, the State party should ensure the establishment adequate reparation programmes, including for medical treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and allocate adequate resources to ensure the effective functioning of such programmes;

(j) Juvenile offenders should be separated on the basis of age and seriousness of the offence, as recommended by the Committee in its last concluding observations as well as by the Committee the Rights of the Child;<sup>109</sup>

(k) Police stations should not hold detainees without presentation before a judge beyond the 24-hour period prescribed by the law;

(l) Statistics disaggregated by age, sex and race on the number of complaints of torture received and investigations carried out should be compiled in a public document which should be submitted to the Parliament and brought to the attention of the Committee;

(m) In all cases in which a person alleges torture, the competent authorities should guarantee that an independent medical examination is carried out in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Medical doctors should be trained to identify injuries that are characteristic of torture or ill-treatment in accordance with the Istanbul Protocol. Forensic examinations of detainees should be routine and not dependant on a police request;

(n) The technical and scientific independence of forensic doctors in the execution of their forensic work should be guaranteed, including through placing them under the judicial authority or any other independent authority and separating them from all police structures;

(o) The State party should consider ratifying the Optional Protocol to the Convention, which would provide for the establishment of a national protection mechanism with the authority to make periodic visits to places of detention;

(p) The State party should consider accepting the competence of the Committee to receive and consider individual communications under article 22 of the Convention.

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<sup>109</sup> CAT/C/NPL/CO/2, para. 21, and CRC/C/15/Add.261, para. 97.

## **Part 2**

### **Comments and observations submitted by Nepal on 8 August 2011**

111. Nepal received a report adopted by the Committee against Torture under Article 20 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention). The report, supposedly based on abundant and consistent information submitted to the Committee and received from a variety of sources, concludes that torture is being systematically practiced in the territory of Nepal, mainly in police custody. Having gone through the contents of the report, Nepal would like to submit that the information and allegations relied on to reach such a conclusion have no basis in fact.

112. It should be noted that Nepal is undergoing a profound socio-economic and political transformation within an overall framework of democratic polity following the peaceful People's Movement in 2006. The mandate of the Movement comprises peace, change, stability, establishment of a competitive multiparty democratic system of governance, rule of law, promotion and protection of human rights and fundamental freedoms, full press freedom, and an independent judiciary based on democratic values and norms. Human rights remain at the centre of the peace process, which in turn, stands anchored to the principles of democracy, equity, inclusion and participation. The decision of the democratically elected Constituent Assembly to declare Nepal as a Federal Democratic Republic on 28 May 2008 represents a rare peaceful transformation in contemporary history. The transformation process firmly establishes political, economic, cultural and social rights of the people as the bedrock of Nepal's democratic process. Nepal is presently engaged in building national democratic institutions to consolidate democratic gains, expedite the process of socio-economic transformation, and take the peace process to meaningful conclusion including the framing of a democratic constitution by the Constituent Assembly.

113. The Committee's decision to initiate a confidential procedure under article 20 of the Convention seems to have been based on some reports that were published in the framework of a campaign against Nepal going beyond the agenda of protection and promotion of human rights. Thus, Nepal would like to assert that such reports should not constitute part of any credible procedure of human rights treaty bodies in order for them to maintain independence, impartiality and freedom from any kind of influence, be it emanating from the State or international organizations or individuals or entities.

114. The Interim Constitution of Nepal, 2007 (the Constitution) has established the obligation of the State to adopt a political system fully upholding the universally accepted concepts of basic human rights, competitive multiparty democratic system, rule of law and independence of judiciary, while putting an end to impunity. Nepal is undergoing a transitional phase, which is itself a delicate and difficult period. Challenges like corruption and impunity also face any State in this phase. Establishing the rule of law remains a supreme task as well as an essential foundation of any democratic society. Nepal firmly believes that a strong and inclusive democracy can help meet these challenges in a comprehensive and sustainable manner. Accordingly, the Government of Nepal (GON) has undertaken, and will undertake, a range of measures to address these issues. These measures include enhanced respect for rule of law, focusing on more effective implementation of relevant laws, human rights treaties and directives and recommendations by the Supreme Court and National Human Rights Commission (NHRC), revamping relevant institutions and security bodies with adequate resources and formulating commissions on disappearance, and truth and reconciliation.

115. The Constitution prohibits torture or cruel, inhuman or degrading treatment or punishment and provides constitutional guarantee to any person taken into custody. Any person who suffers from torture or ill treatment is entitled to compensation in accordance with law. The Government of Nepal, Ministry of Home Affairs finalized a draft legislation criminalizing torture fully in line with the Convention against Torture, and forwarded it to the Ministry of Law and Justice for the finalization of the draft bill. Nepal has implemented the Compensation Relating to Torture Act since 1996. Moreover, the Government of Nepal has tabled some important bills to the Legislature-Parliament for enactment. These bills include bills on the penal code and criminal procedure code. They contain provisions, inter alia, prohibiting torture in any form with entitlement of the victims to compensation. Nepal is thus unequivocally committed to the rule of law and under no circumstance condones the practice of torture. Allegations of systematic practice of torture is essentially an unfair and unilateral story created against Nepal. Nepal would also like to note that the Special Rapporteur's interpretation of the situation does not correspond to ground realities. Nepal would like to reiterate that it rejects the conclusion about the existence of systematic practice of torture in its territory. It is also noteworthy that the Constitution prohibits incommunicado detention; incommunicado detention is not practised in Nepal.

116. In 2007, Nepal enacted the Military Act, 2007, repealing the Military Act, 1959. Under Section 62 of the Military Act, 2007, there is a provision to form a committee headed by the Deputy Attorney General to investigate cases regarding corruption, theft, torture and disappearance, and the proceedings of these cases are taken up in the Military Special Court. If there is dissatisfaction with the verdict made by the Military Special Court, under Section 119 of the Military Act, 2007, there is a provision to take the case to the Supreme Court for appeal. Further, under Section 66 of the Act, cases of rape and murder committed by a military person and which involves a civilian, do not fall under the jurisdiction of the Military Act and is taken up by the regular court.

117. Nepal would like to submit that isolated incidents, if any, cannot be generalized as an outcome of deliberate State policy. Nepal neither condones torture nor does it have a State policy to let perpetrators go with impunity. It has always remained serious about any allegation of torture and the persons found guilty of committing torture are brought to justice promptly. Actions have been taken against a number of security officials in this regard. Action has been taken against a total of 571 police personnel, ranging from police constable to deputy inspector general of police. Of these, 375 personnel were subjected to action for the violation of the right against torture and other cruel, inhuman and degrading treatment. A total of 54 armed police personnel have been subjected to action for violations of human rights. The action includes demotion to a lower post, removal from service, withholding of promotion and grade, and suspension. Similarly, the Nepal Army has also punished 285 army personnel in past human rights violation cases. The Nepal Army has conducted investigations into human rights violations, and handed down the following sentences to the army personnel of various ranks: 118 sentences of imprisonment; 62 discharges from service, 40 demotions, 23 forfeits of grade, 26 forfeits of promotion, 8 warnings, 8 sentences to pay compensation to families of victims. Nepal believes that this demonstrates scrupulous attention paid by the security agencies to take each and every incident of human rights violations involving security personnel seriously and to investigate and sentence the perpetrators. It reflects the zero-tolerance policy of Nepal towards human rights violations.

118. Various policy, legal and institutional measures have been adopted to further ensure the integration of human rights principles and values in the entire set up of security agencies. The Nepal Army has been incorporating human rights and international humanitarian law (IHL) package in all training (basic, career and special curricula) conducted by it. A separate training package, inter alia, is also conducted at various locations of Division Headquarters and Brigade Headquarters periodically. In the period

between 2007 and 2010, a total of 1032 persons were given human rights and IHL package, sensitizing all staff in basic norms. A total of 367 army personnel have already obtained training on United Nations Security Council Resolutions 1325 and 1820. With the joint effort of the Nepal Army and the International Committee of the Red Cross (ICRC), a training movie about the law of armed conflict has been developed and distributed within the Nepal Army. Similarly, with a view to providing field commanders with quick reference book, an IHL handbook has been published and distributed within the Nepal Army. A zero-tolerance policy has been applied against any violations of human rights and IHL. Commensurate institutional arrangements have been made. The Nepal Army established a Human Rights Directorate in 2006, with basic mandate to impart knowledge to the armed forces about human rights and enable them to fully carry out commitments on human rights. Moreover, there is a human rights division in each Regional Headquarters and human rights sections at the Brigade level, and this provision is planned to be extended up to the operational level. It is also to note that a human rights promotion and grievance handling section has recently been established in the Ministry of Defence. In 2010, a military code of conduct was enforced, which also prohibit any involvement in acts of torture.

119. The Human Rights Unit of Nepal Police has been monitoring operational activities of the police and issued the Nepal Police Human Rights Standing Order to each and every police personnel. The Unit has administered internal investigation on the receipt of human rights complaints. A regular well-functioning mechanism developed within the Nepal Police has responded to and investigated allegations of human rights violations involving police personnel of all ranks. A national committee on IHL was formed in 2007 under the chairpersonship of the Minister for Law and Justice. The committee has been working for the domestication of IHL instruments to which Nepal is a party.

120. The authorities have maintained custody registers in police stations and prisons. The Appellate Court and Chief District Officers are empowered to access the register at any time. Maintenance of custody registers has been made more systematic and detailed so that it reflects the detailed particulars of detainees and their release or transfer. The national human rights institutions including the NHRC, and institutions such as the Office of High Commissioner for Human Rights (OHCHR) and the ICRC have been given access to prisons and places of detention with all requisite cooperation on the part of the GON. The Constitution guarantees the independence of judiciary and the right of a person to seek remedy of habeas corpus. Every detainee has a guaranteed right to seek constitutional remedy and to ascertain the legality of his/her detention.

121. Every person taken into custody is brought for a medical check-up, and the same process is followed when the person is being sent to prison as per the order of the competent court. If any police personnel are involved in torture, the case is immediately investigated and the perpetrators are punished in accordance with law. Similarly, the NHRC has forwarded some 35 cases of compensation in favour of victims of torture from 2007 to date. Compensation in the sum of 1,450,000 Rupees has already been provided to the victims, and the remaining sum is being provided as per the decision of the Council of Ministers.

122. The State Cases Act, 1993 provides that investigation of criminal cases has to be carried out with the direct involvement and under the supervision of District Attorneys. Detainees have been guaranteed the right to consult with the lawyer of their choice. The Constitution in Article 135 authorizes the Attorney General to investigate into any complaints or allegations of torture and ill-treatment. Compensation has been provided to victims of torture as directed by the courts of law. The Government of Nepal remains engaged in developing requisite legal and institutional infrastructures with a view to acceding to the Rome Statute of the International Criminal Court. Nepal has adopted and

implemented an action plan on implementation of the recommendations of the Universal Periodic Review (UPR).

123. The GON has been implementing the recommendations of the NHRC and continues to be committed to cooperating with the work of the NHRC. It has established a database on the status of implementation of the recommendations of the NHRC, and set up a fast track special implementation and follow-up mechanism for the implementation of recommendations.

124. Nepal has been implementing the three-year National Human Rights Action Plan, 2010, following its comprehensive review to align it with the realization of economic, social and cultural rights in general and the Millennium Development Goals in particular. This Action Plan includes, inter alia, separate chapters on peace, security, law enforcement and human rights protection. Legal reforms, prison reforms, improvement in detention centres, effective implementation of the compensation related provision of the Compensation Relating to Torture Act are major areas for intervention. Measures have been in place to make a new law on the prohibition of torture and compensation in consonance with the Convention against Torture. A central torture-related compensation fund is being established to ensure prompt provision of compensation to the victims of torture. Similarly, a range of activities have been carried out to achieve the objective of prison management and reforms as envisaged by the Action Plan. Enhancing the economic, social standards and physical facilities of prisoners/detainees in prisons, making timely reforms in tune with relevant international principles and standards, providing effective counselling to prisoners/detainees, segregating detainees suffering from mental diseases from other detainees, developing the system of engaging offenders of minor cases in community services and re-integration or socialization of prisoners/detainees, physical improvements in prisons, establishment of reform systems for juvenile delinquents and protection and promotion of the rights of child of prisoners/detainees in prisons are some important activities being launched in this regard.

125. A great number of awareness-raising and sensitization programs have been launched for security personnel on the importance of complying with the provisions of the Convention when dealing with law and order situations. The visit to Nepal by the Special Rapporteur on torture and the submission of Nepal's periodic reports for consideration by the Committee are some examples of Nepal's efforts to honour its commitment under the Convention. The practice of torture in order to extract confessions or obtain information from detainees is strictly outlawed. Any confession so obtained is not admissible in evidence before a court of law. Nepal would like to make it clear that it has no policy to allow torture as a method of criminal investigation.

126. In relation to the issue of the vetting of security personnel, Nepal would like to reiterate that it has already introduced such a system on its own initiative. Since 2005, the Nepal Army has implemented the policy that those who are found guilty of human rights violations are disqualified from participating in United Nations peacekeeping missions. The Nepal Police and Armed Police Force have also implemented a similar policy of vetting.

127. In relation to the OHCHR-Nepal report entitled "Investigating Allegations of Extra-Judicial Killings in the Terai" of July 2010, Nepal had made its responses and comments on it. Nepal would like to reiterate that it has categorically refuted the contents and facts presented in the report.

128. Nepal's attention has also been drawn to the recommendations made by the Committee, and would like to make the following observations in this respect:

(a) The Constitution itself prohibits any act of torture. The Constitution is the fundamental policy and law of the land, and any law inconsistent with it is void. Torture is also outlawed by various laws including the Compensation Relating to Torture Act. When

the practice of torture is strictly outlawed by the fundamental law of the land, it is a testimony that Nepal has already publicly condemned the practice of torture. Through periodic reports submitted under various treaties to which Nepal is a party, including the Convention against Torture, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, as well as its national report on UPR, Nepal has described the measures taken to curb torture;

(b) Nepal is in the process of adopting a specific legislation criminalizing torture in consonance with the spirit of the Convention. A bill on the Penal Code tabled by the Government of Nepal before the Legislature-Parliament also contains provisions criminalizing torture;

(c) Through the publicity of various measures designed to prevent torture, Nepal has been sending a clear and unambiguous message condemning torture and ill-treatment to all persons and groups under its jurisdiction;

(d) The Legislative Committee of the Legislature-Parliament is actively deliberating on the bills on the Truth and Reconciliation Commission and the Commission on the Inquiry into Disappearances. The GON firmly believes that these bills will be adopted without delay, in accordance with the legislative procedures of the Legislature-Parliament;

(e) As mentioned above, complaints alleging torture by public officials have been promptly, effectively and impartially investigated, and offenders prosecuted and convicted;

(f) In relation to ratifying the Optional Protocol to the Convention, and accepting the competence of the Committee to receive and consider individual communications under article 22 of the Convention, Nepal would like to mention that at the moment it does not intend to be a party to the Optional Protocol, nor accept the competence of the Committee with regard to communications;

(g) In relation to other recommendations, various policy, legal and institutional measures have already been adopted and implemented. The existing legal provisions amply take care of those recommendations.

129. Despite various constraints and challenges inherent in the kind of political and socio-economic transformation and the peace process in a post-conflict situation, Nepal is fully committed to the protection and promotion of human rights. The GON feels that all these positive developments and remarkable improvements in the human rights situation on the ground should have been duly appreciated and acknowledged as such in the report.

130. In the light of the foregoing, Nepal does not agree with the allegation of systematic practice of torture in Nepal and rejects the report. The Committee's conclusion of widespread use of torture merely on the basis of allegations is totally unfounded and appears to ignore the sincere efforts made by national authorities to fight against such crime. Nepal would, therefore, like to request the Committee to withdraw the inquiry procedure.

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